

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE AMERICAN STEAMSHIP "COLUSA," Her
Boilers, Engines, Tackle, Apparel and Other
Furniture, and GRACE STEAMSHIP COM-
PANY, a Corporation,

Appellants,

vs.

GEORGE I. DUNWOODY,

Appellee.

Apostles on Appeal.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

Filed

SEP 24 1907

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY —No. 16,129.

GEORGE I. DUNWOODY,

Libelant and Appellee,

vs.

The American Steamship "COLUSA" etc., (Grace Steamship Company, Claimant), and GRACE STEAMSHIP COMPANY, a Corporation,
Libelees and Appellants.

Praeceptum for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit upon the appeal heretofore perfected in this court, and include in said transcript the following pleadings, proceedings and papers on file herein, to wit:

1. All those papers required by Section 1 of Paragraph 1 of Rule IV of the Rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

2. All the pleadings in said cause and the exhibits annexed thereto.

3. All the testimony and other proofs adduced in said cause, including the testimony taken at the trial; all depositions taken by either party and admitted in evidence, and all exhibits introduced by

either party. Said exhibits to be sent up as original exhibits.

4. The opinion and decision of the court. [1*]
5. The final decree and notice of appeal.
6. The assignment of errors.

GOODFELLOW, EELLS, MOORE AND
ORRICK,

Proctors for Libelees and Appellants.

Service of a copy of the within is hereby acknowledged this 11th day of June, A. D. 1917.

F. R. WALL,
Proctor for Libelant.

[Endorsed]: Filed Jun. 11, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2]

**Statement of Clerk, U. S. District Court Under
Admiralty Rule 4.**

No. 16,129.

GEORGE I. DUNWOODY,

Libelant,

vs.

The American Steamship "COLUSA," Her Boilers,
Engines, Tackle, Apparel, and Other Fur-
niture,

and

GRACE STEAMSHIP COMPANY, a Corpora-
tion,

Respondent.

*Page-number appearing at foot of page of original certified Apostles on Appeal.

PARTIES.

Libelant:

GEORGE I. DUNWOODY.

Respondents:

The American Steamship "COLUSA," etc.,
and GRACE STEAMSHIP COMPANY,
a Corporation.

Claimant:

GRACE STEAMSHIP COMPANY, a Corporation.

PROCTORS.

For Libelant:

F. R. WALL, Esquire, San Francisco, California.

For Respondents and Claimant:

GOODFELLOW, EELLS, MOORE & ORRICK, San Francisco, California. [3]

PROCEEDINGS.

1916.

December 16. Filed verified Libel, for damages, for personal injuries, in the sum of \$5000.00, interest and costs.

Issued Monition for attachment of the Steamship "COLUSA," which said Monition was afterwards, on the 18th day of December, 1916, returned and filed, with the following Return of the United States Marshal endorsed thereon: "In obedience to the within Monition, I attached the Am. S. S. "Colusa"

therein described, on the 16th day of December, 1916, at Pier 26, San Francisco, Cal., and have given due notice to all persons claiming the same that this Court will, on the 26th day of December, 1916 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I posted a notice of seizure on the herein-named Am. S. S. "Colusa," and at the same time, handed to and left a copy of the within Monition with Clifton Curtis, Master of the S. S. "Colusa" whom I found in charge.

J. B. HOLOHAN,

United States Marshal.

By Lawrence J. Conlon,

Office Deputy."

San Francisco, Cal. Dec. 16th, 1916. [4]

1916.

December 16. Issued Citation for appearance of Respondent (Grace Steamship Company), which Citation was afterwards, on the 18th day of December, 1916, returned and filed with the following Return of the United States Marshal endorsed

thereon: "I have served this writ personally, by copy on the Grace Steamship Company, by handing to and leaving a true and correct copy thereof with G. H. Carter, Sub-manager of the Grace Steamship Company, personally at San Francisco, California, on this 16th day of December, A. D. 1916."

J. B. HOLOHAN,
U. S. Marshal.

By Lawrence J. Conlon,
Office Deputy Marshal."

Filed Claim of Grace Steamship Company, a Corporation, to American Steamship "Colusa."

Filed Admiralty Stipulation, for the release of the Steamship "Colusa," in the sum of \$4000.00, with Maryland Casualty Company as surety.

1917.

- January 22. Filed Answer of Respondent.
- March 14. Filed Amendment to Answer of Respondent.
16. The above-entitled cause this day came on for hearing in the District Court of the United States, for the Northern District of California, at the City and County of San Francisco, before the Honorable, Maurice T. Dooling, Judge; and after hearing duly had, was submitted to the Court for decision. [5]

March 16. Filed deposition of John Bergsten, a witness produced on behalf of Respondent, taken before Charles R. Holton, a Notary Public, at San Francisco, Calif.

Filed deposition of Carl Pfautsch, a witness produced on behalf of Libelant, taken before Thomas E. Hayden, U. S. Commissioner, at San Francisco, California.

Filed deposition of Hugo Dallman, a witness produced on behalf of Libelant, taken before Thomas E. Hayden, U. S. Commissioner, at San Francisco, California.

May 14. The Court this day rendered a written opinion, in which it was ordered that a decree be entered in favor of the libelant, in the sum of \$1500.00 and costs.

22. Filed Final Decree.

June 6. Filed Notice of Appeal.

Filed Bond on Appeal in the aggregate sum of \$3250.00, with United States Fidelity & Guaranty Company, as surety.

July 23. Filed Assignment of Errors. [6]

*In the United States District Court, in and for the
Southern Division of the Northern District of
California, First Division.*

IN ADMIRALTY—No. 16,129.

GEO. I. DUNWOODY,

Libellant,

vs.

The Am. Steamship "COLUSA," etc., and GRACE
STEAMSHIP COMPANY, a Corporation,
Libelees.

Libel for Damages for Personal Injuries: \$5,000.

To the Honorable M. T. DOOLING, Judge of the
United States District Court, in and for the
Southern Division of the Northern District of
California, First Division, In Admiralty:

The libel of George I. Dunwoody, late a seaman on
the steamship "Colusa," a vessel of the merchant
marine of the United States against said steamship
"Colusa," her boilers, engines, tackle, apparel and
other furniture, and against all persons claiming any
interest therein, in a cause of damages for personal
injuries to enforce the laws made and existing for
the health and safety of seamen, civil and maritime,
alleges as follows:

CAUSE OF LIBEL AGAINST SAID "COLUSA."

1. That certain steamship or vessel known as and
called the "Colusa" is, and was at all of the times
hereinafter mentioned, a vessel of the merchant
marine of the United States; that said vessel is now
in the port of San Francisco, in the state of Cali-

partially disabled from following any occupation requiring manual labor. That by reason of the premises libelant has been damaged in the sum of \$5,000, which amount he asks this court to award to him.

6. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

CAUSE OF LIBEL AGAINST GRACE STEAMSHIP CO.

The libel of George I. Dunwoody, late a seaman on the steamship "Colusa," against Grace Steamship Company, a Corporation, and a shipowner, in a cause of damages for personal injuries to enforce the laws made and existing for the health and safety of seamen, civil and maritime, alleges as follows: [9]

1. Libelant hereby refers to and makes a part of this his libel *in personam* all of the articles numbered "1," "2," "3," and "4," in the foregoing libel *in rem* as if the allegations of each of said articles were here particularly set out at length and in detail.

2. That, as libelant is informed and believes and therefore alleges the truth to be:

At all of the times herein mentioned and referred to said libelee Grace Steamship Company was, ever since has been, and still is, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business at the city of New York, in the State of New York; that at all of said times said libelee was the owner of and operated the steamship "Colusa," the vessel herein referred to; that at all of said times this libelant George I. Dunwoody was in the service and

employ as a seaman of said Grace Steamship Company, a Corporation.

3. That, further, said injuries were also caused by the negligence of the boatswain of said vessel in using and in causing and in ordering to be used said forelock or pin; and, further, said injuries were also caused by the negligence of the mate of said vessel in not covering or causing to be covered the opening of said number one hatch of said vessel; that at all of said times said libelant was under the authority of said boatswain and of said mate, and that at all of said times said boatswain and said mate were seamen having command of and authority over said libelant.

4. Libelant hereby refers to and makes articles numbered "5" and "6" of the foregoing cause of libel *in rem* a part of this his cause of libel *in personam* in the same manner as if all of the allegations of each of said articles were here set out at length and in full. [10]

WHEREFORE, libelant prays that process in due form of law, according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against said steamship "Colusa," her boilers, engines, tackle, apparel and other furniture and that all persons claiming any interest therein may be cited to appear and answer on oath all and singular the matters aforesaid; and that due process may also issue against libelee Grace Steamship Company, a Corporation; and that said company be cited to appear and answer on oath all and singular the matters aforesaid, and if said libelee cannot be found, then that its goods and

chattels may be attached to the amount sued for with interest and costs, and if goods and chattels belonging to it cannot be found, then that its credits and effects in the hands of W. R. Grace & Company, a Corporation, may be attached in the hands of said W. R. Grace & Company, a Corporation, garnishee, and that said garnishee be summoned to appear and answer on oath as to the credits and effects in its hands belonging to said libelee Grace Steamship Company, a Corporation; and that this Court will decree the payment by said libelee Grace Steamship Company, a Corporation, to this libelant of the aforesaid sum of \$5,000 and interest and costs; and that said steamship "Colusa," her boilers, engines, tackle, apparel and other furniture, be condemned and sold to pay said \$5,000 and interest and costs; and that libelant may have such other and further relief as he may be entitled to receive.

F. R. WALL,

Proctor for Libelant.

GEORGE I. DUNWOODY,

Libelant.

Subscribed and sworn to before me this 16th day of December, 1916.

[Seal]

C. W. CALBREATH,

Deputy Clerk United States District Court in and for the Southern Division of the Northern District of California.

[Endorsed]: Filed Dec. 16, 1916. W. B. Maling. Clerk. By C. W. Calbreath, Deputy Clerk. [11]

*In the District Court of the United States of
America, Northern District of California.*

IN ADMIRALTY—No. 16,129.

GEORGE I. DUNWOODY,

Libelant,

vs.

The Am. Steamship "COLUSA," etc., and GRACE
STEAMSHIP COMPANY, a Corporation,

(Claim of Grace Steamship Co.)

To the Honorable Judges of the District Court of the
United States for the Northern District of Cali-
fornia:

The Claim of Grace Steamship Co. to the Am.
Steamship "Colusa," her tackle, apparel and furni-
ture, now in the custody of the Marshal of the United
States for the Northern District of California, at
the suit of George I. Dunwoody alleges—

That Grace Steamship Co. is the true and *bona
fide* owners of the said Am. S. S. "Colusa," her tackle,
apparel and furniture. and that no other person is
owner thereof.

Wherefore, the claimant pray—that this Honor-
able Court will be pleased to decree a restriction of
the same to Grace Steamship Co. and otherwise right
and justice to administer in the premises.

GRACE STEAMSHIP CO.,
E. J. EYRE, Auditor.

Northern District of California,—ss.

GRACE STEAMSHIP CO.,
E. J. EYRE, Auditor.

2. Admits that the allegations of paragraph 2 of said libel are true.

3. Denies that on the 24th day of September, 1916, or at any other time, or at all, that the libelant without fault on his part received any injuries whatever. Denies while the libelant was engaged in setting up a turnbuckle in order to fasten the lashings or fastenings of said deckload of said vessel, the forelock or pin that secured or held in place the link over the pelican hook of said turnbuckle slipped out or that thereby [13] libelant was thrown off said deckload through the open hatch of number one hatch of said vessel, or any hatch, or at all. Denies that libelant from any cause whatever, or at all, fell a distance of 17 feet, or any distance, over and above 4 feet, or that in falling struck with great force or violence upon the boxes under the opening of said hatch, or was by so striking injured.

4. Denies that the injuries referred to in said libel were caused in any manner whatever, or at all, by the unseaworthiness of said vessel, or by any unseaworthiness of said vessel, or by the failure or neglect, or any failure or neglect of her owners, or any person, to supply or keep in order the appliances appurtenant to said vessel, and in this behalf avers that said steamship "Colusa" was at all times entirely seaworthy and that all the appliances thereon were at all times kept in perfect order. Denies that the said forelock or pin was a sixpenny nail and denies that the pin or forelock referred to in said libel was at all or in any manner unsuitable or at all or in any manner unfit for the purposes for which it was

used, as referred to in said libel, and denies that the same was liable at any time or at all to fall or work out or was particularly or at all liable to fall out because it was too small or too loose for the purposes for which it was used, and denies that it was too small or too loose for the purposes for which it was used.

5. Alleges that it has not sufficient information or belief to enable it to answer the allegation of said libel that "libelant has suffered great physical and mental pain and anguish, and has been totally unfitted from following his occupation as a seaman, or any occupation whatsoever since said 24th day of September, 1916, and will continue to be so unfitted for sometime to come, but for how long he does not know; that libelant may be permanently partially [14] disabled from following any occupation requiring manuel labor"; and basing its denial thereof on that ground, denies said allegation and requires proof of the same.

Denies that by reason of any of the matter set forth in the libel herein, or by reason of any facts or circumstances related therein or at all libelant has been damaged by said alleged injuries in the sum of five thousand (5,000) dollars, or in any other sum whatsoever, or at all.

And for a further and separate answer and defense to said libel, respondent alleges that any injury or injuries suffered by libelant were not caused by any unseaworthiness of said steamship "Colusa," or by reason of any improper or unsuitable or unfit appliances on said steamship, but that the said injuries were caused by libelant's own carelessness and negli-

gence in failing to properly adjust the said turnbuckle fastening the said deck lashings and in carelessly and negligently screwing up or tightening the said improperly adjusted turnbuckle, and by libelant's own carelessness and negligence in the manner in which he tightened up the said deck lashing apparatus. That all and singular the premises are true.

WHEREFORE, respondent prays that this Honorable Court will pronounce against the demand of the libelant in this libel above mentioned with costs.

GOODFELLOW, EELLS, MOORE & ORRICK,

Proctors for Respondents.

The answer of Grace Steamship Company, a corporation, respondent herein, to the alleged cause of libel of George I. Dunwoody, libelant, alleges, denies and admits as follows:

1. Admits the allegations in paragraph 1 of said libel are true. [15]

2. Admits the allegations in paragraph 2 of said libel are true.

3. Denies that on the 24th day of September, 1916, or at any other time, or at all, that the libelant without fault on his part received any injuries whatever. Denies while the libelant was engaged in setting up a turnbuckle in order to fasten the lashings or fastenings of said deckload of said vessel, the forelock or pin that secured or held in place the link over the pelican hook of said turnbuckle slipped out or that thereby libelant was thrown off said deckload through the open hatch of number one hatch of said vessel, or any hatch, or at all. Denies that libelant from any cause whatever, or at all, fell a distance of

17 feet, or any distance, over and above 4 feet, or that in falling, struck with great force or violence upon the boxes under the opening of said hatch, or was by so striking injured.

4. Denies that the injuries referred to in said libel were caused in any manner whatever, or at all, by the unseaworthiness of said vessel, or by any unseaworthiness of said vessel, or by the failure or neglect, or any failure or neglect of her owners, or any person, to supply or keep in order the appliances appurtenant to said vessel, and in this behalf the respondent avers that said steamship "Colusa" was at all times entirely seaworthy, and that all the appliances thereon were at all times kept in perfect order. Denies that the pin or forelock referred to in said libel was a sixpenny nail or was at all or in any manner unsuitable or at all or in any manner unfit for the purposes for which it was used, as referred to in said libel, and denies that the same was liable at any time or at all to fall out or work out or was particularly or at all liable to fall out because it was too small or [16] too loose for the purposes for which it was used, and denies that it was too small or too loose for the purposes for which it was used.

5. Admits that the allegations of paragraph 2 of the libel against this respondent are true.

6. Denies that the injuries referred to in said libel were also or at all or in any manner caused by the or any negligence of the boatswain of said vessel in using or in causing or in ordering to be used said forelock or pin, and denies that the said boatswain or any boatswain or any person whatever other than

the libelant himself ordered or caused to be used the said forelock or pin, and denies that said injuries were also caused or at all caused by the or any negligence of the mate of said vessel in not covering or causing to be covered the opening of said number one hatch of said vessel.

7. Alleges that it has not sufficient information or belief to enable it to answer the allegation of said libel that "libelant has suffered great physical and mental pain and anguish, and has been totally unfitted from following his occupation as a seaman, or any occupation whatsoever since said 24th day of September, 1916, and will continue to be so unfitted for sometime to come, but for how long he does not know; that libelant may be permanently partially disabled from following any occupation requiring manuel labor"; and basing its denial thereof on that ground, denies said allegation and requires proof of the same.

Denies that by reason of any of the matters set forth in the libel herein, or by reason of any facts or circumstances related therein or at all libelant has been damaged by said alleged [17] injuries in the sum of five thousand (5,000) dollars. or in any other sum whatsoever, or at all.

And for a further and separate answer and defense to said libel, respondent alleges that any injury or injuries suffered by libelant were not caused by any unseaworthiness of said steamship "Colusa," or by reason of any improper or unsuitable or unfit appliances on said steamship, but that the said injuries were caused by libelant's own carelessness and

negligence in failing to properly adjust the said turnbuckle fastening the said deck lashings and in carelessly and negligently screwing up or tightening the said improperly adjusted turnbuckle, and by libelant's own carelessness and negligence in the manner in which he tightened up the said deck lashing apparatus. That all and singular the premises are true.

WHEREFORE, respondent prays that this Honorable Court will pronounce against the demand of the libelant in this libel above mentioned with costs.

GOODFELLOW, EELLS, MOORE & ORRICK,

Proctors for Respondent. [18]

E. T. Ford, being duly sworn, deposes and says: That he is an agent of Grace Steamship Company, a corporation, owner of the American Steamship "Colusa" and respondent herein; that there are no officers of the said corporation now in the city and county of San Francisco, and for this reason he makes this verification for and on behalf of said corporation; that as such agent he is informed of the facts of this matter and has read the foregoing answer and knows the contents thereof, and that the said answer is true to the best of his knowledge, information and belief.

E. T. FORD.

Subscribed and sworn to before me, this 22d day
of January, 1917.

[Seal]

MARY L. THOMAS,

Notary Public in and for the City and County of
San Francisco, State of California.

Service of a copy of the within is hereby acknowledged this 22d day of January A. D. 1917.

F. R. WALL,
Proctor for Libelant.

[Endorsed]: Filed Jan. 22, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [19]

*In the United States District Court, in and for the
Southern Division of the Northern District of
California, First Division.*

IN ADMIRALTY—No. 16,129.

GEORGE I. DUNWOODY,

Libelant,

vs.

The Am. Steamship "COLUSA," etc., and GRACE
STEAMSHIP COMPANY, a Corporation,
Libelees.

Amendment to Answer.

Now comes Grace Steamship Company, a corporation, owner of the American Steamship "Colusa." and files as of course this amendment to its answer herein, and for a further and separate answer to the libel against said "Colusa," alleges as follows:

For a further and separate answer and defense to said libel, claimant alleges that said libelant was careless and negligent in and about the alleged matters in said libel referred to, which carelessness and negligence proximately concurred with the alleged negligence and carelessness of respondent and proximately contributed to the alleged injury and damage suffered by libelant. That said alleged carelessness

and negligence on the part of said libelant consisted in this, to wit: That said libelant was careless and negligent in adjusting the turnbuckle referred to in the libel herein. That libelant carelessly and negligently failed and neglected to properly or at all fasten the pin which prevented the link from slipping off the pelican hook of said turnbuckle, and negligently and carelessly failed to observe whether the appliances mentioned in said libel were properly or at all secured or adjusted. [20]

For a further and separate answer and defense to said libel claimant alleges that the said alleged injury and damage to said libelant was proximately caused by and proximately resulted from an ordinary risk of the employment of said libelant. That said libelant was fully aware of the said risk and danger connected with his said employment.

For a further and separate answer and defense to said libel, claimant alleges that the said alleged injury and damage to libelant was proximately caused by and through the carelessness and negligence of the fellow servants of said libelant other than the seamen in command.

WHEREFORE, claimant prays that this Honorable Court will pronounce against the demand of the libelant in this libel above mentioned with costs.

For a further and separate answer to the suit against said Grace Steamship Company, respondent alleges as follows:

For a further and separate answer and defense to said suit, respondent alleges that said libelant was careless and negligent in and about the alleged mat-

ters in said libel referred to, which carelessness and negligence proximately concurred with the alleged injury and damage suffered by libelant. That said carelessness and negligence on the part of said libelant consisted in this, to wit: That said libelant was careless and negligent in adjusting the turnbuckle referred to in the libel herein. That libelant carelessly and negligently failed and neglected to properly or at all fasten the pin which prevented the link from slipping off the pelican hook of said turnbuckle, and negligently and carelessly failed to observe whether the appliances mentioned in said libel were properly or at all secured or adjusted.

For a further and separate answer and defense to said [21] suit respondent alleges that the said alleged injury and damage to said libelant was proximately caused by and proximately resulted from an ordinary risk of the employment of said libelant. That said libelant was fully aware of the said risk and danger connected with his said employment.

For a further and separate answer and defense to said suit, respondent alleges that the said alleged injury and damage to libelant was proximately caused by and through the carelessness and negligence of the fellow-servants of said libelant other than the seamen in command.

WHEREFORE, respondents pray that this Honorable Court will pronounce against the demand of the libelant in this suit above mentioned with costs.

Proctors for Respondents.

W. Upward, being duly sworn, deposes and says: That he is an agent of Grace Steamship Company, a corporation, owner of the American Steamship "Colusa" and respondent herein; that there are no officers of the said corporation now in the city and county of San Francisco, and for this reason he makes this verification for and on behalf of said corporation; that as such agent he is informed of the facts of this matter and has read the foregoing answer and knows the contents thereof, and that the said answer is true to the best of his knowledge, information and belief.

W. UPWARD.

Subscribed and sworn to before me this 13th day of March, 1917.

[Seal]

M. V. COLLINS,
Notary Public in and for the City and County of
San Francisco, State of California. [22]

[Endorsed]: Filed Mar. 14, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [23]

*In the United States District Court, in and for the
Southern Division of the Northern District of
California, First Division.*

· IN ADMIRALTY.

GEORGE I. DUNWOODY,

Libellant,

vs.

The Am. Steamship "COLUSA," etc., and GRACE
STEAMSHIP COMPANY (a Corporation),
Libellees.

BE IT REMEMBERED that, pursuant to the stipulation hereinafter set forth and, to wit: on Friday the 29th day of December, 1916, at the hour of 2 o'clock P. M., of said day, in the office of Goodfellow, Eells, Orrick & Moore located in the Insurance Exchange Building, San Francisco, California, before me, Charles R. Holton, a Notary Public in and for the city and county of San Francisco, personally appeared John Bergsten, a witness produced on behalf of the libellees in the above-entitled action, now pending in said court, who, being, by me, first duly sworn was then and there examined and interrogated by R. W. Palmer, Esq., of the firm of Messrs. Goodfellow, Eells, Orrick & Moore, attorneys for said libelees and by F. R. Wall, Esq., attorney for said libelant, whereupon said witness testified as follows, to wit: [24]

Deposition of John Bergsten, for Libelees.

JOHN BERGSTEN, a witness called on behalf of the libellee, being first duly sworn testified as follows:

Mr. WALL.—It is hereby stipulated by the parties to the above-entitled libel that the testimony of John Bergsten, a witness produced on behalf of the libellee, may be taken at this time and place without any other or further notice, notice being hereby waived, by Charles R. Holton, who is a notary public and stenographer, and the same may be thereafter transcribed by him and used upon any trial of the cause, either in the above-entitled Court, or on appeal by any of the parties hereto; and further that all objections to the testimony are hereby waived, except

(Deposition of John Bergsten.)

as to the form of the questions, which objections must be made at this time.

Mr. PALMER.—(To the witness.) Q. Your name is John Bergsten? A. Yes, sir.

Q. What is your occupation?

A. I was chief officer of the "Colusa."

Q. Then you are a seafaring man?

A. I am a past master mariner, steam and sailing.

Q. How long have you been a past master mariner? A. For the past fifteen years.

Q. For how many years have you been following this business?

A. I was born and raised on the sea, and I have followed it since I was eleven years old. I am thirty-six years old now,—that makes twenty-five years.

Q. On or about September 24th, 1916, with what ship company were you connected?

A. Grace & Co.,—steamship "Colusa."

Q. What position did you hold on that ship?

A. Chief officer.

Q. Do you remember the time when Mr. Dunwoody was injured? A. Yes, sir. [25]

Q. Was that on or about September 24th, 1916?

A. Yes, sir; September 24th, 1916.

Q. Was he injured on the steamship "Colusa"?

A. Yes, sir; down in Peru at a place they call Païta.

Q. Where was the ship with reference to this port of Païta at the time of the accident?

A. She was in the harbor, heaving up the anchor

(Deposition of John Bergsten.)

and proceeding to sea.

Q. About how long after you weighed anchor did this accident happen?

A. Probably we hadn't finished heaving anchor when this accident happened.

Q. Where was Mr. Dunwoody working at the time that he was injured?

A. He was in No. 1 hatch, under my especial directions, setting up deck lashings.

Q. Will you explain what is the purpose of these deck lashings?

A. These deck lashings is what we carry for to secure our deckload of lumber, or any other cargo which we carry on deck. At the time when this accident occurred we had about nine feet of deckload on the "Colusa," which had to be secured before we went to sea.

Q. Your deckload was of lumber at that time, was it? A. Yes, sir.

Q. Will you relate just as you remember it how the accident to Mr. Dunwoody occurred,—what was he doing and what you did,—just everything that happened there?

A. I told Mr. Dunwoody to set up the deck lashings across No. 1 hatch. He took them on the starboard side, and I took them on the port side myself, hauling up the chains. The chains had to meet on top of No. 1 hatch for to put on the turnbuckle, to [26] secure the chain lashings tight.

Q. Just explain the deck lashing, how it is

(Deposition of John Bergsten.)

fastened, and what it consists of.

A. There are two chains that meet with a turnbuckle which consists of two screws and two iron bolts; one side is shackled into the chain and the other side is fastened with a kind of slip hook that is hooked into the chain, while we settle up the chains and take the weight off the deckload. In this hook there is a hole made to put in a nail or iron bolt. We generally used, on the "Colusa" a threepenny nail to hold this hook in place, which work Dunwoody was doing under my order at the time the accident happened.

Q. Then, as I understand it, these two chains are fastened on the side of the ship, and they meet in the middle with this turnbuckle that you have explained.

A. Yes, they are shackled fast to the deck.

Q. Explain what you mean by setting up the deck lashings.

A. By setting up the deck lashings,—it is like this—there are two chains coming together in the middle,—one end we generally shackle with a turnbuckle in the chain and the other end we hook it on with this slip hook, and then we just screw them up, taking the weight of the lumber by forcing the lumber into the middle of the ship.

(Note: At this time the libelant entered the room and took his seat beside his proctor.)

Mr. PALMER.—Q. Then, as I understand it, Mr. Bergsten, the purpose of this apparatus is to draw

(Deposition of John Bergsten.)

the chains together and tighten them.

A. Yes, that is the purpose of them.

Q. You can proceed now and tell just what happened on this date, September 24th, 1916. [27]

A. Dunwoody was setting up this chain lashing, under my directions there,—I was standing on the chain on the port side, and he was behind me about fifteen feet; he was using—he had to use, to get the power to set this turnbuckle,—he had to use a key wrench, or pipe wrench, as we call it, about thirty-six inches long, to get the weight off the deckload; he was occupied in setting it up, and I was standing on the chain on the port side to feel the weight of it. All of a sudden I felt the chain give away from under me, and I looked back and Dunwoody had disappeared. He fell over backwards and I found him on top of the hatch combing and cargo.

Q. Who, besides yourself and Mr. Dunwoody, and if anybody, had anything to do with the fastening of this particular deck lashing on No. 1 hatch?

A. Nobody.

Q. Then, as I understand your testimony, all of the work in connection with putting this deck lashing in place was done by yourself and Mr. Dunwoody.

A. Yes, by myself and Mr. Dunwoody.

Q. What portion of that work did you actually do yourself?

A. Just lifted up the chains on one side.

Q. Which side was that?

(Deposition of John Bergsten.)

A. That was on the port side; he took the star-board side.

Q. What did you do with the chain when you lifted it up? A. I just past it to Dunwoody.

Q. At that time did he have hold of the chain on the other side?

A. Yes, he had his chain up all right and was waiting for me.

Q. Who coupled up the two chains?

A. Himself.

Q. Did you watch him while he did it?

A. No, I can't say that I did, but I was there; I can't say that I paid any special attention to shackling it in or connecting [28] it up, because we leave that to the sailors.

Q. Did you have anything to do yourself with the actual coupling up of the chains?

A. No, sir; never touched it.

Q. You say that when you next saw Mr. Dunwoody after the chain slackened, he was down in the hatch.

A. He was laying on top of a box in the hatch combing.

Q. Wasn't there a good deal of cargo underneath the hatch?

A. She was filled up,—No. 1 hatch; there probably had been seven or eight boxes taken out of the forward end that hadn't been touched.

Q. You mean all the cargo was up level?

A. There was no room for any more cargo in that hatch.

(Deposition of John Bergsten.)

Q. This chain, and this place where Mr. Dunwoody was working, where was it with reference to the hatch?

A. Right across the hatch, he was standing on boxes connecting her up. We generally don't keep turnbuckles in the center of the hatch,—for our own benefit we generally keep them on one side of the hatch combing, so we can reach over the deckload, so we don't have to crawl out from the middle.

Q. What is the distance that he fell, if he did fall?

A. I didn't measure it.

Q. Approximately.

A. At the very most six feet, because we took over 1,000,000 feet of lumber, and the usual cargo is a million and a half. The best part of a million had gone off the ship and deckload at the time this accident occurred. The hatch combing was four feet, and if he fell six feet, I am giving him the full benefit,—but I didn't measure the distance. If I say six feet I am on the safe side.

Q. How long had you known Mr. Dunwoody?

A. He joined the ship in Puget Sound. [29]

Q. How long before the accident?

A. Between a month and five weeks.

Q. Was he an experienced seaman?

Mr. WALL.—I object to the question on the ground that it calls for a conclusion of the witness, and no proper foundation has been laid.

A. Yes, he is what I would call a first-class man.

Q. During your connection with him on that ship,

(Deposition of John Bergsten.)

did you have occasion to observe him doing his work?

A. Never need to; I can tell a seaman when I see him. Inside of an hour I know what kind of a man I have to deal with. I found him a first-class seaman in connection with the work he had to do on the "Colusa."

Q. Was that one of the regular duties to be performed by seamen on this ship,—securing the deck lashings? A. Yes, sir.

Q. Had Mr. Dunwoody been called upon to perform this same duty before? A. Yes, sir.

Q. Did you examine the chain, turnbuckle and hooks after Mr. Dunwoody was injured?

A. Yes, sir.

Q. Did you find any break, or anything wrong with it?

A. No, sir; the same chains and turnbuckle are there in the "Colusa" now as when this accident happened.

Q. Do you know why the chains parted on this particular occasion, of your own knowledge?

A. Only what I surmise,—I don't know. Either the ring we got over the slip hook wasn't set tight fast, or there was no nail put in the hole to hold the ring there. That is the only thing I can think of.

Mr. WALL.—I move to strike out the answer of the witness as a surmise on his part, the witness having testified that he does not know. [30]

Mr. PALMER.—Q. From your experience as a chief officer, and from your experience with tackle

(Deposition of John Bergsten.)

of this kind would, or would not, in your best judgment, what you have just explained in your previous answer, have caused this particular parting of the chains?

Mr. WALL.—I object to the question on the ground that it is incompetent, irrelevant and immaterial and is calling for a conclusion of the witness, and as to it not being the testimony in regard to the actual facts as to what did occur.

Mr. PALMER.—Q. In other words, Mr. Bergsten, I don't think you just understand my question. You have just explained in your previous answer what you think caused the break. Now, what I am asking you is as to whether your answer to that question, based upon your experience as a mariner and chief officer,—is that what caused the break in your best judgment?

Mr. WALL.—I make the same objection as to the question immediately preceding.

A. Yes, sir, from my best judgment, that is the only thing that could cause the chain lashing to part. If any other thing had happened, it would have showed on the turnbuckle or chains, which were O. K.

Mr. WALL.—I move to strike out the answer for the same reasons assigned in my last motion to strike out the answer of the witness.

Mr. PALMER.—Q. You have just testified that Mr. Dunwoody connected up the two ends of this apparatus? A. Yes, sir.

Q. In connecting that apparatus, what would he

(Deposition of John Bergsten.)

have to do, or what did he do?

Mr. WALL.—That is, if you know,—if you saw him do it.

A. I saw him connecting up everything,—he went to get his pipe wrench and set up this chain lashing.

[31]

Q. Will you explain more in detail just what operations he would go through when he connected the two ends of that chain, so that we can have a more definite idea of the apparatus and the motions he went through?

A. When Dunwoody got the two chains together, he had to go and get a little tackle,—block, rope and tackle,—so as to hold these two chains together, to get this turnbuckle and shackle on; he chained one side, and he put a hook on the other side; to set the chains he had to get them together, which he did. While I was standing and looking at him, when he got his turnbuckle and shackle on, he let go his tackle and took it off, and this turnbuckle was on and the chains in position ready for to put weight on it. He got his pipe wrench and started to set the chains up,—

Q. (Interrupting.) Now, in making a connection such as was made that day between the two ends of those chains, did anybody, who was making such a connection, have to adjust this ring which you have just spoken of as being the apparatus which probably slipped off?

Mr. WALL.—I object to the question on the

(Deposition of John Bergsten.)

ground that it is leading and because it calls for a conclusion of the witness.

A. If that ring wasn't put on in the side hook, he couldn't set the chains up; that ring has to go over the slip hook for to set the turnbuckle up.

Mr. WALL.—I move to strike out the answer as not being responsive to the question.

Mr. PALMER.—And it would have to be adjusted at the same time.

A. Yes, sir.

Q. Then when Mr. Dunwoody made that connection that day, in order to make the connection, would he have to slip that ring over [32] the hook and put in a pin,—would he or would he not?

Mr. WALL.—I object to the question on the ground that it is leading and also because it calls for a conclusion of the witness.

A. Yes, sir; he had to put that ring on and secure it,—the way it ought to be done by putting that iron bolt or a threepenny nail into it, which was always used, and which he knew where to find,—to put into that hole.

Mr. WALL.—From the answer I move to strike out all after the words "iron bolt," as not being responsive to the question and as being a conclusion of the witness.

Mr. PALMER.—Q. Did you or did you not notice Mr. Dunwoody as he slipped the ring over the hook?

A. No, sir.

Q. Did you, or did you not, see him put a pin in the hole which you have described?

(Deposition of John Bergsten.)

Mr. WALL.—I object to the question as leading.

A. No, sir; I didn't see Mr. Dunwoody put anything in the hole in that hook.

Mr. PALMER.—Q. What is the usual type of pin which was used to put into that hole, to hold that ring, on the steamship "Colusa"?

A. A threepenny nail.

Q. Did, or did not, a threepenny nail fit the hole?

Mr. WALL.—I object to the question as leading. At this time I protest particularly against such leading questions and I insist that no more be asked.

Mr. PALMER.—Q. State whether or not a threepenny nail would fit this hole?

Mr. WALL.—I object to that question as leading.

A. Yes, sir; it would just fit the hole.

Mr. PALMER.—Could any larger bolt have been inserted into it? [33]

A. Yes, but not very much larger. We always use a threepenny nail, but there is room to get a little larger pin in, but we always used a threepenny nail.

Q. Did you find any signs of there having been a nail in this hole after the accident?

A. No, sir; after we carried Dunwoody aft, I returned forward to see if anything broke, and I found everything all right except this link was slipped off and the chains disconnected, which couldn't have been disconnected any other way without the link slipping off.

Q. Did you find the link off?

A. The link couldn't come off.

Q. Was the link broken?

(Deposition of John Bergsten.)

A. No, sir; it is on the ship to-day.

Q. Do you know, of your own knowledge, whether there were available at that time threepenny nails on the "Colusa"? A. Yes, sir; lots of them.

Q. Where were they kept?

A. From where Dunwoody was standing, they were kept twenty feet away.

Q. In what kind of a receptacle?

A. We have a square box with different compartments for different sized nails. We generally keep them in the boatswain's locker which was about twenty feet away from where Dunwoody was standing.

Q. And they were where the seamen could get them? A. Get them any time.

Q. Were there any other persons close at hand at the time of the accident?

A. No, sir. What do you call close?

Q. So far as you could see,—that saw what happened? [34] A. No.

Q. Then so far as your own knowledge goes, you were the only witness of Mr. Dunwoody's accident?

A. Nobody knew anything about the accident until I came and got him. The other men were about seventy-five feet away, busy performing ship's duties; when they are busy they don't look around at anybody.

Q. Nobody came up to the scene of the accident until you called them,—is that your testimony?

A. Yes, that is correct.

(Deposition of John Bergsten.)

Q. After the accident, what did you do with Mr. Dunwoody?

A. We picked him out of the hatch and carried him to just outside of the entrance to the saloon, or dining room would fit it better.

Q. I don't want the details, but I want to know is, did you take him to a doctor at any time?

A. Two hours after this happened, I personally took him ashore and got him attended to.

Q. How long did he remain on the ship after the accident? A. About two hours.

Q. After he left the ship entirely?

A. He left us down at San Pedro on the 22d.

Q. About how long was that after the accident that he left the ship at San Pedro?

A. That must have been six weeks after the accident that he left the ship,—somewhere around there—I don't remember the number of days; I could trace it up if necessary, because that is in the log-book.

Q. What was his appearance at the time he left the ship at San Pedro, so far as you could judge yourself?

A. Of course his arm looked all right; so far as I could see his arm was on the road to recovery, the way it ought to be. [35]

Q. Was he able to move it around?

A. Yes, sir.

Q. Was it in a sling?

(Deposition of John Bergsten.)

A. The sling had been off his arm about three weeks or a month.

Q. Was he boarded on the ship during these six weeks? A. Yes, sir.

Mr. PALMER.—I think that is all now, but I may probably think of another question.

Cross-examination.

Mr. WALL.—Q. How long had you been on the “Colusa” at the time of the accident?

A. You mean altogether?

Q. Altogether, yes.

A. About five months.

Q. What part of the deck was the starboard shackle?

A. Just straight down the main deck.

Q. Was it out to the side of the ship, or was it in alongside of the hatch?

A. On the side of the ship.

Q. And the bolt on the other side was outside of the ship on the port side? A. Yes, sir.

Q. And the two deck lashings came up and over the deckload; and were they brought together in the middle of the ship or on one side?

A. On one side.

Q. Which one? A. On the port side.

Q. How far over on the port side?

A. About four feet.

Q. From the center?

A. No, from the hatch combing. We always have one end of the turnbuckle over on the deckload so

(Deposition of John Bergsten.)

we can reach from the deckload,—about three feet.

[36]

Q. At the time that Dunwoody fell he was behind you? A. Yes.

Q. And you were standing just where?

A. On the port side,—on the port side on top of the deck load with my feet on top of the chains, feeling the weight of the chain as he was setting it up.

Q. Did you feel a strain on the chain at that time?

A. Yes, sir.

Q. As I understand you to say, the last that you actually saw of Dunwoody before the accident was when he had gone to get the pipe wrench,—is that correct? A. Yes, sir.

Q. That is a Stillson wrench?

A. It is the same thing,—we call it a pipe wrench on the ship.

Q. This hook that was on one end of the turnbuckle,—was that in the port side or on the starboard side? A. No, it was on the port side.

Q. Was the starboard side of the turnbuckle where it was fastened to the chain,—was that fastened to the chain permanently?

A. No, sir; it was shackled in for the time being, by putting the shackle in the chain and slipping a bolt into the turnbuckle and screwing it up.

Q. Was there a nut screwed on the outside of the bolt?

A. There was no nut on that,—the bolt wasn't made to put any nut on,—couldn't be put on.

Q. When was that screwed on?

(Deposition of John Bergsten.)

A. By himself at that time.

Q. So that the turnbuckle was brought there at the time and put on? A. Yes, sir.

Q. The port side had a hook in?

A. At the time it did. [37]

Q. How was it at this particular time?

A. It happened to be shackled in on the starboard side with a hook over on the port side.

Q. Now, the hook hinged about the middle, about where the chain went over the hook? A. Yes, sir.

Q. So that hinge would drop down?

A. Yes, sir.

Q. Is this ring put over the upper part of the hook? A. Yes, sir.

Q. Where does the other part of the ring fit?

A. That fits on the shank of the same hook.

Q. So that the link runs loose? A. Yes, sir.

Q. When the deck lashing is in place and the hinge part of the hook is in place, then the link is put over the hinge part of the hook? A. Yes, sir.

Q. And after that the pin is put through the hole in the upper part of the hinge part of the hook?

A. Yes, that is correct.

Q. Who had charge of the turnbuckles on board the ship? A. Nobody in particular.

Q. Who has charge of the gear and equipment on the "Colusa"?

A. Myself and the boatswain under my supervision.

Q. That is the usual custom on merchant vessels, that the first officer has charge of the gear and equip-

(Deposition of John Bergsten.)

ment, with the boatswain under him?

A. Yes, sir.

Q. Where was the turnbuckle kept when not in use?

A. On the starboard underneath the forecath-head in a locker.

Q. Was the locker kept locked?

A. Yes, down in Central America.

Q. Who kept the key? A. The storekeeper.

Q. Did the boatswain generally get things out of the locker? [38]

A. No, when we left, we opened the lockers, and whatever we needed we would let the men go and get for themselves; but in port the lockers are locked.

Q. And when the men want to get something out of the lockers either the boatswain or you would give on order on the storekeeper?

A. We generally told the storekeeper that we were going to set up so and so, and let the boys have what they want.

Q. How many turnbuckles of this description were there on the "Colusa" at that time?

A. About 32 or 34—say 30 to be sure.

Q. At least 30? A. Yes.

Q. Did they get any of these turnbuckles since you have been on board of her?

A. No, sir; they are in the same condition as when I joined the ship.

Q. They didn't get any new ones, while you were on board?

A. No, sir; they were in good condition when I

(Deposition of John Bergsten.)

went there and in good condition when I left; none been broke.

Mr. PALMER.—I ask that the answer be stricken out as not responsive to the question.

Mr. WALL.—Q. The whole thirty were kept in the locker when not in use? A. Yes, sir.

Q. When were they overhauled by you, if they were overhauled by you at all, during the time that you were upon her?

Mr. PALMER.—I object to the question on the ground that it is incompetent, irrelevant and immaterial, and has no reference to this particular turnbuckle in question.

A. Every time we set them up, before they are used, there was always a man detailed to overhaul them. [39]

Q. Did you give this turnbuckle to Dunwoody before he used it? A. No, sir.

Q. Did you detail a man to overhaul this particular turnbuckle before it was given to Dunwoody?

A. No, sir.

Q. Had this turnbuckle ever been used for setting up a deck-load on this voyage before, so far as you know?

A. It was just taken off twenty hours before.

Q. In this port? A. Yes, in this port.

Q. Do you know who took it off?

A. One of the men.

Q. Do you know whether it was put back into the locker?

A. Yes, sir; all turnbuckles used are put back,—

(Deposition of John Bergsten.)

they had to put them back or they steal them.

Q. Do you know, of your own knowledge, or are you just testifying as to what is customary or habitual?

A. I know that they were put away, because there were none on deck.

Q. Did you tell Dunwoody to go and get a turnbuckle?

A. Yes, I told Dunwoody to set up the deck lashings over No. 1 hatch, which meant that he would get everything which he required for that job.

Q. You didn't specially tell him to go and get a turnbuckle,—you just told him to set up the chain lashings on that job; that is the fact, isn't it?

A. Yes, sir.

Q. What was the boatswain's name on that ship?

A. His name was,—I think it is Dallman.

Q. Do you know where the boatswain was during the time that this setting up was going or from the time it began until the accident? [40]

A. Yes, sir.

Q. Did you see him? A. Yes, sir.

Q. Where did you see him?

A. Right across No. 2 hatch.

Q. Where is No. 2 hatch with reference to No. 1?

A. Just behind it,—probably 75 feet away from where I was standing,—abaft No. 1 hatch.

Q. Can you swear positively, of your personal knowledge, that the boatswain was not around No. 1 hatch from the time that Dunwoody started to work to get the gear until the time of the accident?

(Deposition of John Bergsten.)

A. Yes, I can.

Q. How can you so testify?

A. Because the boatswain never came near to help carry Dunwoody out of the hatch.

Q. You were up on the deckload over on the port side? A. Yes, sir.

Q. Was there a deckload over on the star-board side? A. Yes, sir; even.

Q. What sort of a passage-way was there between the deckloads on each side and the deck combings?

A. No. 1 hatch was empty.

Q. You said that there was a space of about three feet?

A. I said there was about three feet to where Dunwoody fell.

Q. Was the deckload right up against the hatch?

A. About two inches is allowed for us to reach our hands down to do anything that is required.

Q. And it was the same way with the deckload on the starboard side? A. Yes, sir.

Q. How far did the forward end of the deckload on your side [41] extend forward of No. 1 hatch?

A. Up to the bulkhead—to the forecastle head.

Q. How far aft did the after end of the deckload extend,—how far aft of No. 1 hatch did it extend on your side?

A. Right up to the midships bulkhead.

Q. And about how far was the midships bulkhead from the after end of No. 1 hatch?

A. About 125 feet,—I ain't sure,—inside of a few feet.

(Deposition of John Bergsten.)

Q. You say No. 2 hatch was about 75 feet from No. 1 hatch?

A. No, I said that the boatswain was about 75 feet from where I was. The deckload was even right where he was standing, right across the ship; from where the boatswain was standing, he could see all over the forward end of the "Colusa" if he wanted to.

Q. If he wanted to come up to No. 1 hatch, he walked forward on the deckload? A. Yes, sir.

Q. You said that they used a 3-penny nail or a bolt for the hole in the hook? A. Yes, sir.

Q. How many of these turnbuckles had bolts on them?

A. All of them when they were in use,—either a bolt or a 3-penny nail.

Q. What part of them had bolts, and what part had 3-penny nails? A. Only one part.

Q. What portion of the 30 or more turnbuckles,—what proportion of them had bolts and what proportion had 3-penny nails in them?

A. There was no special bolt made for these turnbuckles.

Q. You said that you used a bolt or a 3-penny nail?

A. Yes, surely.

Q. On how many did you use bolts, and on how many did you use 3-penny nails? [42]

A. Whenever we got hold of bolts, in this nail box, we put them in, and if we didn't find any bolts, we used nails.

Q. What did the bolts look like?

A. Just like a nail with the head cut off.

(Deposition of John Bergsten.)

Q. Were these 3-penny nails round nails or old-fashioned nails? A. They were wire nails.

Q. So that you don't know, of your own personal knowledge, whether there was a nail used in this case, or whether there was a bolt used? A. I don't know.

Q. Did you, yourself, ever put a nail in this particular turnbuckle?

A. That I couldn't answer because they are all alike.

Q. The turnbuckles are all alike, or the nails all alike ?

A. (Continuing.) That I couldn't say, because they are all alike; I might have handled that turnbuckle.

Q. Are the holes all alike?

A. They are all alike.

Q. You don't know how old that turnbuckle was?

A. The ship was only four years old.

Q. You don't know what particular turnbuckle was used at that particular time?

A. I don't know which particular turnbuckle was used at that particular time. If we need a turnbuckle for any purpose we get one.

Q. This is the fact then that one of the thirty or more turnbuckles on that ship was used, but you don't know which one of the thirty was used at that time,—that is the fact?

A. Yes, that is the fact.

Q. You don't know, then, whether the hole in the turnbuckle which was used, was larger or smaller than the hole in the other turnbuckles, of your own

(Deposition of John Bergsten.)

personal knowledge? [43] A. Yes, sir.

Q. How?

A. Because they were all punched alike,—that is, all out of one pattern,—all punched with one punch.

Q. Were you there when they were punched?

A. No, sir.

Q. You didn't see them punched? A. No, sir.

Q. You don't know which particular turnbuckle was used at that time,—you said you didn't know which one of these particular turnbuckles was used at the time of the accident? A. Yes, sir.

Q. You don't know whether the hole in the particular turnbuckle which was used was larger or smaller than the hole in the others?

A. I don't know,—they were all alike.

Q. You don't know, because you think that they were all alike when they were in use?

A. Yes, sir.

Q. What are they made of,—this part of the turnbuckle? A. Iron.

Q. What sort of iron? A. Flat iron.

Q. Wrought iron? A. No, sir; steel.

Q. How do you know it is steel?

A. If I am not mistaken, I have got bills on the ship which call for steel hooks.

Q. But you don't know, Captain, of your own personal knowledge, whether it was cast iron, or wrought iron, or steel, do you?

A. I do,—I know it is not cast iron,—I am positive of that.

(Deposition of John Bergsten.)

Q. But you don't know whether it was wrought or steel?

A. No, sir; I will take that back, but I know it was not cast iron.

Q. You don't know whether this particular turnbuckle had been used a great deal more than the others, or whether it had been [44] used a great deal less than the others?

A. Yes, I know, because they use them all except on particular short runs.

Q. It is a fact that you do not know, and you cannot know, whether the hole in this hook had been worn out to a certain extent by use, of your own personal knowledge?

Mr. PALMER.—I object to the question on the ground that it is argumentative.

A. Yes, sir.

Q. How?

A. If that had been worn out we would have known it, because we have a standing order from Grace & Co., on every trip, to send all equipment ashore to be repaired,—on every trip as we near home, we examine the equipment to see what is needed to be repaired.

Q. You don't know, and you can't know, of your own knowledge, whether the hole in this particular hook had been worn out more than the holes in the other hooks. Do you understand that question?

A. Yes, sir. When I picked up the turnbuckle, after the chain had parted, it was in the same condition as the rest of the turnbuckles were, and the hole

(Deposition of John Bergsten.)

was in a good state,—in good shape.

Q. Did you take a nail or bolt and put it into the hole after the accident?

A. No, sir; I picked up the turnbuckle and looked at it.

Q. Was there any way on that turnbuckle or hook for fastening or lashing the bolt?

A. We always put in lashing on in bad weather.

Q. No, I am talking about the turnbuckle itself. Was there any eye or a small hook, or anything of that kind for fastening the bolt or nail in the hole?

A. No, sir. [45]

Q. Was there anything on that hook, or on that turnbuckle for lashing the bolt and securing it after it had been put in the hole? A. No, sir.

Q. Now, you say you examined that hole after the accident. You said also that you could put a bolt or a nail larger than a 3-penny nail into the hole?

A. Yes, sir.

Q. Just how much larger bolt, or how much larger nail, could you have put into it right after the accident?

A. Just a fraction,—that is all.

Q. So that, as a matter of fact, then, the 3-penny nail, when it was put in would work loose, if you could put in something larger than a 3-penny nail?

A. No, sir; there would be the weight on it. Whenever a nail is put in there, there is a bend in it.

Q. Do you bend it? A. We bend them.

Q. Did you bend this one?

(Deposition of John Bergsten.)

A. I didn't,—if I did it personally, I would have bent it.

Q. You were there in charge, seeing that the lashing was properly set up?

A. Yes, sir; I was in charge of all the work on the "Colusa."

Q. But this particular job, you were at the No. 1 hatch in charge of seeing that the lashing where the turnbuckle that Dunwoody was working with,—you were in charge of seeing that it was put up properly?

A. I was superintending the work,—looking after it to see that I got a certain amount of strain on that chain that I wanted.

Q. You were in charge of seeing that the deck lashing was properly set up? A. Yes, sir. [46]

Q. How long was the 3-penny nail, or the bolt that was generally used in this hook,—how long was it in inches?

A. (Indicating.) This is about the size,—about 3 inches.

Q. How high did you say that the deck-load was about the hatch combing of No. 1 hatch?

A. Between 3 and 6 feet,—I didn't measure.

Q. How much cargo was taken out of that hatch just before the accident,—how much cargo had been taken out of No. 1 hatch?

A. There were three or four boxes that I took out and put on the deck,—about three or four boxes on the forward end. This happened on the after end of No. 1 hatch. There are three sections to each hatch.

(Deposition of John Bergsten.)

Mr. WALL.—I think that is all.

Redirect Examination.

Mr. PALMER.—If there had been any cover on the hatch, would there have been any difference in the distance that Mr. Dunwoody fell?

A. No, sir.

Q. Practically the same?

A. The only difference is four inches.

Q. I will ask you again,—did you examine this turnbuckle shortly after the accident?

A. I examined it immediately after I got Dunwoody off the deckload aft.

Q. In what condition was it?

A. In good condition.

Q. Was the hole that we have spoken of here,—did it show any signs of wear?

A. No, sir; it was in first-class condition.

Q. And the chain, and the hook, and all the rest of the apparatus that was there,—in what condition were they? [47]

A. In good condition.

Q. You spoke about bending a nail through them, when was the nail bent, when is it generally bent?

A. After the deck lashing is set tight, they generally take a hammer and bend them.

Q. Every time they set up the deck lashings, and hook up the turnbuckle, they have to put in a new nail? A. Yes, sir.

Q. And you have testified that those nails were available for the men to use? A. Yes, sir.

Q. Other than his broken arm, did Mr. Dunwoody

(Deposition of John Bergsten.)

complain of any other injuries in particular of any consequence?

A. No, sir; I know his leg was bruised a bit, but he never complained about it. He spoke to me about it, but he never made any complaint about it.

Q. So far as you know, his bruises healed up?

A. Yes, sir.

Mr. PALMER.—That is all.

Mr. WALL.—That is all. (Continuing.) The reading and signing of the deposition by the witness is hereby waived. [48]

State of California,

City and County of San Francisco,—ss.

I, Charles R. Holton, a Notary Public in and for the city and county of San Francisco, State of California, do hereby certify that the witness in the foregoing deposition named John Bergsten was by me duly sworn; that said deposition was then taken at the time and place mentioned in the foregoing stipulation, to wit, on Friday, the 29th day of December, 1916, at the hour of 2 o'clock P. M. of said day, in the law office of Messrs. Goodfellow, Eells, Orrick & Moore, located in the Insurance Exchange Building, San Francisco, California; that said deposition was taken down in shorthand by me, and thereafter carefully transcribed into typewriting under my supervision; and that the foregoing is a full, true and complete transcript of the shorthand notes taken by me at said deposition; and I further certify that, at the taking of said deposition, the reading and signing

ments of bail and affidavits, etc., Carl Pfautsch, a witness called on behalf of the libelant.

F. R. Wall, Esq., appeared as proctor for the libelant, and George K. Ford, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of the libelant at the office of F. R. Wall, esq., in the Merchants' Exchange Building, in the city and county of San Francisco, State of California, on Wednesday, December 27, 1916, before Thomas E. Hayden, a United States Commissioner for the Northern District of California and in shorthand by E. W. Lehner.

It is further stipulated that the deposition, when written [50] up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.

Deposition of Carl Pfautsch, for Libelant.

CARL PFAUTSCH, called for the Libelant, sworn.

Mr. WALL.—Q. What is your business, Mr. Pfautsch; what do you do for a living?

A. I am a sailor.

Q. Were you on the "Colusa" at any time this year?

A. I came on board in Callao, and worked up my passage to 'Frisco on the ship, and then I was three weeks on shore, and then I went back and made a trip for two months and a half.

Q. Were you on board of her at the time the libelant over here, Dunwoody, was hurt? A. Yes.

Q. You were on board as a seaman?

A. Yes, I was a seaman on board.

Q. State whether or not you helped Dunwoody with the deck lashings in any way? Did you help him with the deck lashings in any way that day that he got hurt?

A. With that chain, where it happened?

Q. Yes. A. I helped him.

Q. Who else was with you at the time you were helping him?

A. There was the boatswain and the deck boy and another sailor, [51] or two more sailors; I don't remember; I am not sure; I was there and Dunwoody and another sailor, and the boatswain; there was another sailor who was down there, but I don't know if he was helping or not.

(Deposition of Carl Pfautsch.)

Q. Was the deck boy there?

A. The deck boy was there, yes.

Q. Now, tell just what you did in helping him with the lashing, the deck lashings?

A. I helped him, I pulled the tackle—we pulled the tackle together.

Q. What was this tackle used for?

A. To get the chains together.

Q. To get the two ends of the chains as near together as you could.

A. As near as possible, and then to get what we call the turnbuckle in.

Q. To get the turnbuckle in between the two chains? A. Yes.

Q. When you were pulling on the tackle to get the two chains together, was the turnbuckle there at that time? A. Yes, it was on the starboard end.

Q. It was on the starboard end of the chain?

A. Of the chain, yes.

Q. It was on the end of the starboard chain, there?

A. Yes.

Q. Go ahead and tell what else you did. Was the other end of this turnbuckle hooked up while you were there, with the port chain?

A. Yes; while I was there we pulled it tight and we hooked it in; we hooked that end of it in the other chain and then we left to tighten up the other.

Q. State what, if anything, was done about putting the link over the end of the pelican hook.

A. I don't know who done that.

Q. State whether or not the link was put on before

(Deposition of Carl Pfautsch.)

you left. A. Yes, the link was put on.

Q. State whether or not the pin was put in the hole?

A. Yes, there was a nail.

Q. A nail was put in the hole above the link?

A. Above the [52] link, yes.

Q. State whether or not you saw the nail in there before you went away?

A. I saw the nail in there.

Q. Do you know who put the nail in there?

A. No, I couldn't tell you.

Q. Where was the first officer? Do you know the name of the first officer of the ship?

A. Bergsten.

Q. Where was the first officer?

A. He was on the fore-castle-head.

Q. What were they doing up there, then?

A. He was heaving anchor.

Q. Now, then, after you got through working there—this was at No. 1 hatch, where you had been doing this? A. Yes.

Q. After you got through working there, where did you then go?

A. We went to the next deck lashing—not to the next—we left one out.

Q. You went to the one next after that?

A. After, yes.

Q. Near what hatch was that? A. No. 2 hatch.

Q. About how far was No. 2 hatch from No. 1 hatch, to the best of your judgment?

A. About 50 feet.

(Deposition of Carl Pfautsch.)

Q. Who went with you when you went aft to No. 2 hatch?

A. The boatswain, the deck boy, and another sailor, Alm.

Q. How long was it after you left No. 1 hatch before the accident happened?

A. Only a few minutes.

Q. What do you mean by a few minutes; one minute, or two minutes? A. Two minutes.

Q. Only a couple of minutes?

A. A couple of minutes.

Q. Now, when you started to work at No. 1 hatch, at the deck lashing at No. 1 hatch with Dunwoody, who was in charge of your group?

A. Of this work that we done?

Q. Who was in charge of the men in that group?

A. The boatswain.

Q. Who gave the orders to tighten up the deck lashings, to set [53] up the deck lashings and tighten them up? A. The boatswain.

Q. What sort of a nail was it that was put into the top of the pelican hook, over the top of the ring? That is, was it a round nail or was it one of these old-fashioned wedge-shape nails?

A. No, it was a round nail, about 4-inch, I guess.

Q. About how long? A. Four inches long.

Q. State, if you know, how the nail fitted into the hole, whether it fitted in tight, or whether it fitted in loosely? A. It was loose.

Q. Now, after the accident happened, did you go

(Deposition of Carl Pfautsch.)

forward after the accident happened to where he was hurt?

A. Yes; the mate called us forward and told us to get that man out of the hatch.

Q. Did you examine or look to see whether or not the nail was in the hole? A. It was gone.

Q. The nail was gone? A. Yes.

Q. It was not in the hole when you went forward?

A. No.

Q. What was the distance from the top of the deck-load to the hatch coming there at No. 1 hatch where he was working? A. About nine feet.

Cross-examination.

Mr. FORD.—Q. I want to ask you this first: Who have you talked to about this matter before now?

A. What?

Q. Who have you talked to about the matter you have been questioned about before just now?

A. I met Dunwoody yesterday and he asked me to come up here and make a statement; that is all.

Q. You did it, did you? A. Yes, I did.

Q. How did you happen to notice this nail that was put in this pelican hook, in the ring from the pelican hook? A. How do you mean?

Q. How did you happen to notice that? That was done always, was it not?

A. Yes, that was always done.

Q. How did you happen to notice at this particular time what kind of a nail was used?

A. We used always the same nail. [54]

Q. Did you use the same kind of nail this time?

(Deposition of Carl Pfautsch.)

A. Yes.

Q. Who put it in there?

A. I can't remember that.

Q. How did you notice it was the same kind of a nail that you always used?

A. Well, because we used the same nail—we had to tighten up some more of these turnbuckles, and we used the same kind of nail.

Q. What I want to get at is, did you actually see that nail in the pelican hook, or are you just stating that because you always used it?

A. No, I saw the nail.

Q. How did you happen to see it?

A. Well, because we always used the same kind of nail.

Q. Did you, on this particular occasion, see the kind of nail that was used, or are you just saying that because that was what you always did? Which?

A. Well, I can't say exactly, but I know that was the same kind of nail.

Q. To get my question, I am not doubting your statement in the matter, but all I want to find out is whether you knew this or not. When you are asked to tell anything here, all you are to tell is what you saw. A. Yes.

Q. Not what Mr. Dunwoody told you, or what somebody else told you, but what you know yourself. Do you know, yourself, that the same kind of a nail was used as was always used? Did you actually see it yourself? A. Yes, I saw the nail.

Q. Was there anything about it that attracted

(Deposition of Carl Pfautsch.)

your attention? A. No, nothing.

Q. You just answered here that it was loose in the hole. How did you happen to notice that?

A. It was loose, it must have been loose, because it was gone.

Q. You did not see it was loose, did you?

A. No.

Q. Through anything you saw there, you don't know whether it was loose or not, do you?

A. I could not say. [55]

Q. That is just exactly what I thought when you answered me. A. But I know it was gone.

Q. You know it was gone? A. It was gone.

Q. Let me ask you this: Are you able to say right now that there was a nail put in there at all?

A. Yes, there was a nail in there.

Q. You actually saw it yourself? A. Yes.

Q. Not because you always put one in, but in this case you saw the nail? A. Yes, I saw it.

Q. Were these lashings tightened up the same way they always are on these occasions?

A. The lashings, yes.

Q. If the same kind of a nail that was always put through that hole was put in there, there was no reason for its coming out, was there?

A. No. The reason it came out was he turned the turnbuckle, and that hole was upside down.

Q. Who turned the turnbuckle?

A. Dunwoody, and it fell out.

Q. He turned the turnbuckle so that the hole was upside down? A. Yes, and the nail fell out.

(Deposition of Carl Pfautsch.)

Q. How should he have turned it?

A. That was the right way to turn it; it would happen no matter which way he turned it; the nail was loose and it has got to fall out.

Q. How do you know the nail was loose? You are just simply stating your conclusion because the nail came out, are you? A. Yes.

Q. You don't know that yourself?

A. No, I didn't see it fall out.

Q. For all you know he might have pulled it out?

A. I could not tell you that.

Q. For all you know about it, from anything you saw—you don't know what caused the accident, do you, from anything you saw yourself? A. No.

Q. You were not there when the nail came out, if it did come out, [56] were you?

A. No, but I could think it—I knew how it happened. I did not see it.

Q. You can conclude what happened, but you don't know what happened, do you? A. No.

Q. You don't know from anything you saw with your eyes what happened? A. No.

Q. All you know is that Mr. Dunwoody got hurt, and when you got there this hook had loosened from the place where it was fastened?

A. Yes; it was gone altogether; it fell down in the hatch.

Q. The nail was gone altogether? A. Yes.

Q. Did you find the nail afterwards?

A. No, I didn't find it.

Q. Now, what were you and the other parties with

(Deposition of Carl Pfautsch.)

you at Hatch No. 2 doing at the time that Mr. Dunwoody was over at hatch No. 1?

A. We tightened up the other.

Q. You were tightening up another?

A. Another deck lashing.

Q. Was that a separate deck lashing from the one that Dunwoody was working on? A. Yes.

Q. It had nothing to do with the one Dunwoody was on? A. No.

Q. You and the boatswain and this other man went to Hatch No. 2 and Mr. Dunwoody was there working alone? A. He was working alone.

Q. So, whatever he did there, there was nobody helping him? A. No.

Q. This pelican hook and the ring, and the other appliances that were used in tightening up, bringing the two ends of the chain together, were right in front of his eyes when he was working there, were they not?

A. Yes, he was on the deckload.

Q. He could see everything in front of him?

A. Yes.

Q. He could see whether that hole was such that the nail would drop out?

A. No, he could not see that; that was behind him.

Q. What was he working on, then? Why was it behind? [57]

A. He was working on that screw to tighten it up, to get in together, tighten the chain together.

Q. At the time you left there, had these ends been brought together at all?

(Deposition of Carl Pfautsch.)

A. Yes, they were together, but they were not tightened up.

Q. At the time you left, was he tightening it up?

A. Yes, he was tightening it with a stillson wrench.

Redirect Examination.

Mr. WALL.—Q. You were up there when the inboard end of the port deck chain was put through the pelican hook, were you not? A. Yes, I was there.

Q. Where were you working at the time that the inboard end of the port chain was put through the pelican hook, and the ring was put in?

A. I was holding the tackle tight; we pulled the tackle and I was holding the tackle.

Q. What I mean is, how close you were up to that nail that was put in over the link; how far would you be from that?

A. I was standing right over it, right close to it.

Q. You were right over it, about how far distant from your eye to the hole in the pelican hook?

A. About six feet.

Q. Were you standing up, or were you down on the deck load? A. I was standing up.

Q. About six feet it was down below you?

A. Yes.

Q. You were standing up? A. Yes.

Q. Stand up and see how tall you are. You are not six feet tall, are you?

A. No; it is about that far.

Q. It was about six feet from your eye?

A. Yes.

Q. Now, in setting up the deck lashings with that

(Deposition of Carl Pfautsch.)

turnbuckle, was it necessary to turn the turnbuckle over?

A. You could not set it up without turning the turnbuckle over.

Q. That is, the turnbuckle turns around, does it not? A. No. [58]

Q. How does it work?

A. With a stillson wrench you have to turn it.

Q. Did you have to turn the turnbuckle upside down in turning it over in setting it up? A. No.

Q. How did you turn the turnbuckle?

A. With a stillson wrench.

Q. But what I am gettin at is, you said you turned the turnbuckle upside down, Dunwoody?

A. Yes, the chain turned it; he turned it with the stillson wrench and the chain turned, and that nail fell out.

Q. What I am getting at is would it have to do that in turning it? A. Yes.

Q. That is what I mean, it would have to do that?

A. Yes; sometimes we had to put in a spike or something to keep it from turning, keep the other end of the chain from turning.

Recross-examination.

Mr. FORD.—Q. Now, let me ask you another question: You say that in turning this turnbuckle with a stillson wrench, that this turnbuckle would have to turn upside down. That isn't true, is it? The only thing that turned in there was the central part that you took hold of with the stillson wrench, was it not? A. Yes.

(Deposition of Carl Pfautsch.)

Q. Now, whether the part of the turnbuckle where this hook was fastened in, and which this nail was put through, or eye, rather, turned or not, would depend upon whether the person in charge of it adjusted it properly before he started to turn it, would it not? It would not have to turn over, would it?

A. No, it would not. That is right. I did not understand.

Q. Now, Mr. Wall made you say that it would have to turn over. I did not want to leave it that way, because I know better.

A. You mean that end where the pelican hook is on would have to turn? Q. Yes. A. No.

Q. It would not have to turn at all? A. No.

Q. The only thing that would have to turn would be the part of the [59] appliance that you took hold of with the stillson wrench?

A. Yes, that has got to turn, but not the other part.

Redirect Examination.

Mr. WALL.—What I want to get at is, why, then, was it the turnbuckle turned upside down and the nail dropped out?

A. I could not tell if there was grease on it or not; if it is not greased properly then the other end of the chain turns, too, with the pelican hook.

Q. That is your idea of what happened?

A. Yes.

Q. As you have told Mr. Ford, you were not there and saw it. That is your idea of what happened?

A. Yes.

Q. That the turnbuckle turned upside down and

(Deposition of Carl Pfautsch.)

the nail dropped out: Is that it? A. Yes.

Mr. FORD.—Q. But as I understand you, you don't know from anything you saw whether it turned upside down or not. You did not see it turn upside down? A. No, I did not see it.

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel, on Wednesday, December 27, 1916, before me, Thomas E. Hayden, a United States Commissioner for the Northern District of California, at San Francisco, at the office of F. R. Wall, Esq., in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared Carl Pfautsch, a witness called on behalf of the libelant in the cause entitled in the caption hereof; and F. R. Wall, Esq., appeared as proctor for the libelant, and George K. Ford, Esq., appeared as proctor for the respondent; and the said witness having been by me first [60] duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof was expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set
my hand in the office aforesaid this 15 day of March,
1917.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, Northern District of
California, at San Francisco.

[Endorsed]: Filed Mar. 16, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [61]

*In the District Court of the United States, in and for
the Northern District of California, First Divi-
sion.*

GEORGE I. DUNWOODY,

Libelant,

vs.

THE STEAMSHIP "COLUSA,"

Respondent.

Stipulation.

BE IT REMEMBERED, that on Friday, December 29, 1916, pursuant to stipulation of counsel hereunto annexed, at the office of F. R. Wall, Esq., in

the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared before me, Thomas E. Hayden, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., Hugo Dallman, a witness called on behalf of the libelant.

F. R. Wall, Esq., appeared as proctor for the libelant, and George K. Ford, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of the libelant at the office of F. R. Wall, Esq., in the Merchants Exchange Building, in the city and county of San Francisco, State of California, on Friday, December 29, 1916, before Thomas E. Hayden, a United States Commissioner for the Northern District of California, and in shorthand by E. W. Lehner.

It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of [62] the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the

(Deposition of Hugo Dallman.)

testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof is hereby expressly waived.)

Deposition of Hugo Dallman, for Libelant.

HUGO DALLMAN, called for the libelant, sworn.

Mr. WALL.—Q. Give your full name?

A. Hugo Dallman.

Q. What were you doing for a livelihood during the time from June onward of this year?

A. I was boatswain on the “Colusa.”

Q. When did you join her?

A. I don’t know the exact date.

Q. About what time? A. In June sometime.

Q. Of this year? A. Yes.

Q. What month did you leave her?

A. I left her on November 23d.

Q. This year? A. Yes.

Q. Then you were on board of her at the time that Dunwoody, the libelant here, got hurt? A. Yes.

Q. What were you on board of her during the time you were on her? A. I was boatswain.

Q. Were you with Dunwoody at the time that the turnbuckle across the deckload and over No. 1 hatch of the “Colusa” was put in place?

A. Yes, I was in charge of the work. [63]

Q. You were in charge of the gang working there?

A. Yes, I was in charge of putting the lashing on.

Q. Who was under your authority in the group or gang that were working there?

(Deposition of Hugo Dallman.)

A. All the sailors were under my authority.

Q. Do you remember how many of them were there?

A. Well, six—about six or seven; I don't know for sure.

Q. Where was the first officer of the ship, if you know, during the time that you were at work putting the turnbuckle in place?

A. The first officer was taking up the anchor, was on the forecastle-head.

Q. Go ahead and state what was done in regard to putting the turnbuckle in place and how it was done, and who did it, as far as you know.

A. Well, I was there, and we put on the tackles on the chains, then tightened the chains up and put on the turnbuckle, and I sent the deck boy for some nails, and I put a nail in the pelican hook, and I told Dunwoody to tighten up the turnbuckle and I went to the next lashing to put the tackles on there.

Q. I will show you what purports to be a rough sketch of the turnbuckle, and ask you if you recognize that as being a rough representation of what the turnbuckle and the pelican hook was?

A. Yes, that is right.

Q. I ask you what the black circle or spot is there in the end of the pelican hook, between the two capital letters "N" and "N"?

A. That is the hole where the split pin was supposed to be put in there; if we didn't have any we put in a nail.

Q. You put a nail in there?

(Deposition of Hugo Dallman.)

A. Yes, I put a nail in myself.

Q. What is that just below the hole marked "R" going across that way?

A. That is, you mean the link, here? That is the slip link. [64]

Q. It goes around the end of the pelican hook and—

A. (Intg.) The stem of that turnbuckle.

Q. The stem of that part of the turnbuckle?

A. Yes.

Q. And where I have marked the capital letter "H" that is where the lower part of the pelican hook worked around the link marked "L," was it?

A. Yes, that is right.

Q. That is to say, there was a hole in the lower end of the pelican hook and the link worked through that hole in the lower end of the pelican hook?

A. Yes.

Q. So that the pelican hook could move along the link "L"? A. That is right.

Q. Now, then, in this sketch here, I have drawn and marked "Fig. 1" in a circle, and "Fig. 2" in a circle; I ask you if "Fig. 2" represents roughly a continuation of "Fig. 1"? A. Yes.

Q. Then "F" will be—

A. (Intg.) The other end.

Q. (Continuing.) Would be the other end of the turnbuckle? A. Yes.

Q. And that would be the eye or ring?

A. To shackle in to the chain on the other side.

(Deposition of Hugo Dallman.)

Q. To shackle in to the inboard end of the starboard chain?

A. No, it was not inboard; it went from both sides, on the ship, from the starboard side to the port side and met in the middle.

Q. The starboard deck chain was down on the deck on the starboard side and came up and over the deckload to one amidships?

A. Yes, and met the port one amidships.

Q. And the turnbuckle made the connection between the two?

A. Made the connection between the two.

Q. This "F" end of the turnbuckle being shackled into the end of the starboard—

A. (Intg.) Starboard end of the lashing.

Q. Starboard end of the lashing?

A. That is right. [65]

Q. The part marked "T" and "T" represent the threaded parts of the turnbuckle and each end of the turnbuckle, do they? A. Yes.

Q. And the part marked "S" is where the threaded part of each end of the turnbuckle went into the stock or center part of the turnbuckle?

A. Yes.

Q. At the point on each figure marked with a capital "O": Is that correct?

A. Yes, that is right.

Q. And the inboard end of the port deck lashing went over the pelican hook marked "P" below the link and toward what is marked "Fig. 1": is that correct? A. That is correct.

(Deposition of Hugo Dallman.)

Q. Now, then, what did you say was put in this hole by you marked "N"?

A. I put in a nail there.

Q. What sort of a nail?

A. A nail about four inches long.

Q. And four inches long? A. Yes.

Q. How did the nail fit into the hole?

A. Well, it didn't fit; it was too small; we didn't have anything else.

Q. The nail was too small; about how large was the hole?

A. The hole was about, I should say, three-eighths of an inch.

Q. How large was the nail?

A. It was about a quarter of an inch.

Q. Now, where was the turnbuckle between the two inboards ends of the deck lashing with reference to No. 1 hatch?

A. It was right over the hole in No. 1 hatch.

Q. What would happen to the end of that hole in the pelican hook when the turnbuckle was being set up?

A. If there were not two men to hold onto the other end of the chain, if it would turn, and the head of the nail get below, it would drop out and the turnbuckle would slip, it would give way, and the chain would come off; there should have been a split pin—there should have been some kind of a pin in there that could not fall out; a pin should come out like this to prevent it from falling out. [66]

(Deposition of Hugo Dallman.)

Q. A pin like this—

(The witness opens his two index fingers to about an angle of 20 or 30 degrees.)

Mr. FORD.—We move to strike out the last statement of the witness with reference "there should have been a split pin," upon the ground that it is a mere conclusion of the witness.

Mr. WALL.—Q. When the nail was put into the hole in the end of the pelican hook, how did the head of the nail set against the side of the pelican hook, with reference to the ring "R"?

A. Well, lots of times that nail would go right in the hole until the head of the nail rested on the pelican hook, and all the strain would be only on one side of the nail, and the strain of that link would bend that nail and it would give way; it happened lots of times before that; it happened every time we put them on, that it slipped.

Q. Well, now, during the time that you had been on her, and before that accident, state what the fact was in regard to the deckload loosening up because of the ring slipping over the end of the pelican hook.

A. The two trips I was on the ship it happened lots of times, every time we put them on, and got a little too much strain on them, the thing would slip, it would not hold.

Q. How long have you been going to sea?

A. Ten years.

Q. How long have you been acting as boatswain?

A. Nine months.

Q. What are the duties of a boatswain aboard

(Deposition of Hugo Dallman.)

vessels plying out of San Francisco and Pacific Coast ports?

A. To take charge of the deck work as directed by the mate.

Q. What is the fact as to whether the people who work under him being under his authority and having to obey his orders, the boatswain's orders?

A. They were all under my authority.

Q. You were giving the orders and telling them what to do?

A. The mate told me what he wanted to be done, and I went ahead [67] and done the work.

Q. You tell the men, they have to obey orders?

A. Yes.

Q. During the time that you have been going to sea on this coast, both as a seaman and a boatswain, what has been the extent of your experience as to handling turnbuckles similar to this one in securing the deckload?

A. Well, I never saw any turnbuckle that the pelican hook worked like that in any ship.

Q. As to turnbuckles, generally, state whether or not you have had much or little experience with using turnbuckles; go ahead and tell us whether you have had much or little experience, and what it was.

A. I have had experience with deck lashings and rigging screws, and things like that.

Q. I will ask you whether or not you have worked also as a stevedore and rigger, or stevedore or rigger?

A. I never worked as stevedore; I worked as rig-

(Deposition of Hugo Dallman.)

ger at the Union Iron Works.

Q. Worked as rigger at the Union Iron Works?

A. Yes.

Q. In working as a rigger, state whether or not you worked with turnbuckles, in the course of your business?

A. Yes, I have handled lots of turnbuckles.

Q. Referring to "Fig. 1," and to that part marked with the letters "A," "B," showing the end of the pelican hook coming down toward the stock, I ask you if the end of the pelican hook on the "Colusa" that was used at No. 1 hatch came down toward the stock the way that is indicated by the line A B?

A. Yes, it did.

Q. From your experience with turnbuckles, in which direction should the end of the pelican hook have gone?

A. According to my experience it should have had an upward slant to prevent the link from slipping.

Q. You mean it should have had an upward slant, as indicated by the dotted line indicated A C?

A. Yes, that is right. [68]

Q. State whether or not you ever had any conversation with the first officer of the "Colusa" in regard to the turnbuckles on the "Colusa"?

Mr. FORD.—When do you refer to?

Mr. WALL.—Prior to the accident.

A. Yes, the mate, when we were talking about it, said that the turnbuckle should not be on the ship, because it was not safe.

Q. State whether or not you had one or many

(Deposition of Hugo Dallman.)

conversations with him about their not being safe?

A. Yes, it was the talk of the ship, everybody was talking about them, because they slipped every time you put them on.

Q. I mean the talk that you had with the first officer or mate, did you have one, or several, or a good many conversations?

A. I had a good many, and I told him about the turnbuckles, we ought not to put them on, they always slipped by themselves.

Q. State what he said in regard to the turnbuckles at the different conversations?

Mr. FORD.—That is objected to on the ground it is hearsay.

A. I could not tell you any particular words, but he frequently said that it was not fit to be there.

Mr. WALL.—Q. Now, then, what was the distance from the top of the deckload where this turnbuckle was put in to the top of the hatch-coaming of No. 1 hatch?

A. I should say about the height of this room.

Q. That is about how much? A. Ten feet.

Q. Did you see Dunwoody immediately after the accident?

A. Well, I did not see when it happened.

Q. But I mean after the accident?

A. Yes, I carried him up.

Q. From where?

A. From No. 1 hold, out of No. 1 hold.

Q. How far up did you have to carry him?

A. Well, the distance from the cargo up to the

(Deposition of Hugo Dallman.)

hatch-coaming was about six feet. [69]

Q. How did you get him up?

A. There were two of us; we put a ladder down and we carried him up on the ladder.

Q. You had to put a ladder down a distance of about six feet?

A. No, we had to put the ladder down from the deckload down into the hold.

Q. From the deckload right down into the hold?

A. Yes.

Q. How far did the ladder extend down into the hold from the top of the hatch coaming, to your best judgment? A. About six feet.

Q. State what the fact was in regard to whether or not cargo had been taken out of that No. 1 hold before you got to Paita?

A. Yes, cargo was taken out at La Union.

Q. At La Union? A. Yes.

Q. State whether or not there was any hatch cover on that hatch at the time that you took Dunwoody out of the hold?

A. No, there was no hatch cover on it.

Q. When was the hatch cover taken off, if you know?

A. The hatch cover was taken off at La Union.

Q. When was it put back on, if you know?

A. It was put on after we left Paita—no, after we left Callao.

Q. That was the next port? A. Yes.

Mr. WALL.—We will introduce this in evidence

(Deposition of Hugo Dallman.)

and ask that it be marked "Libelant's Exhibit 1, Dallman."

(The diagram is marked "Libelant's Exhibit 1, Dallman.")

Q. State, if you know, whether or not there were any of these pins on board of the "Colusa" that flared out?

A. Yes, there were some pins, but not for the turnbuckles.

Q. But not for the turnbuckles? A. No.

Q. Now, state whether or not in your opinion as a seafaring man, the nail which was put into that hole in the end of the pelican-hook was a fit pin to put in that place?

A. Well, it should have been made to prevent it from falling out, but we could not do [70] that, because that would have bent the nail; the ring would have gone right over the nail and given way right there.

Q. State what the fact was, if you know what the fact was, in regard to the nail being bent and the ring slipping over when a pressure was brought on the turnbuckle?

A. With almost any turnbuckle, if you put any little strain on it, by the strain of the ring coming on the nail and bending over the nail, it will go over the nail and give way.

Cross-examination.

Mr. FORD.—I want you to look at that very closely and tell me if you think that is a fair representation, and particularly that a slant is shown?

(Deposition of Hugo Dallman.)

A. That slant is shown.

Q. That is a fair representation of that hook, is it?

A. It is not an exact drawing.

Q. You say it is not an exact drawing; wherein is it not exact?

A. It is exact to the point where the ring came over, that the hook slants down.

Q. It is exact up to the point where the hook slants down: Where isn't it exact?

Mr. WALL.—I would like to have the record show that when the exhibit was offered in evidence it was only offered as a rough representation of the whole of the turnbuckle.

Mr. FORD.—Q. Here is what I am getting at. That is not a fair representation at the point marked "B," is it?

A. If you take me to the office and show me that turnbuckle, I will show you.

Q. I am going to let you examine that turnbuckle, because you have given this diagram as a representation, I take it.

A. As a rough sketch, yes.

Q. Now, then, where doesn't it properly represent that turnbuckle, so far as the end marked "B" there, is concerned?

A. The end "B" is all right. [71]

Q. Where isn't it all right?

A. Of course, I am not an expert drawer, but it went like this, and the end where the ring went in went down instead of up.

(Deposition of Hugo Dallman.)

Mr. WALL.—Went down toward the stock of the turnbuckle?

A. Yes. I do not say this is accurate; this is a rough sketch; but I say this, where the ring was slipped over, that the turnbuckle went down.

Mr. FORD.—Q. Did you make this drawing?

A. Yes, I drew that; I made a rough sketch.

Q. You made this sketch that has been marked “Libelant’s Exhibit 1, Dallman”?

A. Yes.

Q. As I understand, that fairly represents it?

A. Fairly; the end we are most concerned about went down this way.

Q. What make was this turnbuckle?

A. What do you mean?

Q. What make was it, would you say?

A. What metal it was made of, do you mean?

Q. Was it made by some particular concern?

A. I don’t know who made it; it was on board when I got there.

Q. You say you never saw one before?

A. I never saw a turnbuckle that slanted as much as this one did down.

Q. Did you ever see a turnbuckle of that make before?

A. I saw lots of them, but this link goes through this link here.

Mr. WALL.—Q. Pointing at which link that goes through which link? Indicate the link on the diagram?

A. This link “R” went through this link—

Q. Through this eye, you mean, marked “E”?

(Deposition of Hugo Dallman.)

A. Yes.

Mr. Ford.—Q. All you ever saw before were that way?

A. Not all of them; I saw one like this, too, but it is not extended to this far.

Q. You have seen hundreds of the make of that, haven't you?

A. No, I have never seen them with the link coming down this way; [72] I never saw one.

Q. Did you ever see turnbuckles made with a link operating the same way as those at that time, excepting so far as the point of the link is concerned?

A. I have where the pelican-hook is bigger, coming further down on the stem of the turnbuckle?

Q. Can't you tell me what make that turnbuckle is? A. No, I could not.

Q. You were in charge on that boat and you were working, going out of here, you say, for nine years, didn't you? A. Five years out of Frisco.

Q. You have used turnbuckles during all of that period?

A. I couldn't tell you where that turnbuckle was made, because I didn't worry my head where it came from. It was on there when I went on.

Q. You would recognize the make of this turnbuckle when you saw one?

A. I would recognize the turnbuckle when I saw it, of course I would.

Q. You say you left this boat on November 23, 1916. Where did you leave it?

A. San Pedro.

(Deposition of Hugo Dallman.)

Q. Was that the end of the voyage?

A. That hasn't anything to do with it; I left the ship because it wasn't safe to remain any longer.

Q. What was the matter?

A. Fighting—the officers were fighting, and there was no protection, I never made a trip like that to sea before in my life, and I never want to make another one.

Mr. WALL.—I want to object to this as not proper cross-examination, as to whether or not it was the end of the voyage; as I understand it, there is a cause now pending in this court in which the court will have to determine whether or not it was the end of the voyage.

Mr. FORD.—Q. As to whether he deserted or did not desert? A. I did not desert. [73]

Mr. WALL.—I object to the remark of counsel; there is no such thing as a desertion of a seaman in an American port, a port of the United States.

Mr. FORD.—What do you call it when a man leaves a ship?

A. What do you call it when a man wants to be paid off? Do you call it desertion? Do you think a man would desert and leave \$120 on a ship? It is ridiculous to talk about such a thing.

Q. Don't give me any of that here.

A. I don't see what that has got to do with the trouble here, why I left the ship.

Q. We will show you what it has got to do with it? Now, you were the boatswain there in charge of these men?

(Deposition of Hugo Dallman.)

A. Yes, I was in charge of these men.

Q. You say you put this nail in yourself?

A. I put the nail in myself.

Q. You say you knew it was not a proper appliance? A. Of course I did.

Q. You knew that you were leaving this man in a situation of danger; didn't you?

A. Well, I don't see how you mean that; I had to do as I got told; I am not responsible.

Q. You are not responsible?

A. When I am boatswain of the ship and the mate says, "You do that," that is the way it is done.

Q. Whoever told you how to adjust that turnbuckle, anybody?

A. Who told me how to adjust it?

Q. You knew how to handle a turnbuckle, didn't you, without anybody telling you?

A. Of course I did.

Q. What is the use in your saying that you knew it was not a proper appliance? You would not have put that man up against a situation of that kind if you had known it was dangerous, would you?

Mr. WALL.—I object to that as not proper cross-examination, as the witness has said he was boatswain on the ship and he had [74] to obey the orders of the first officer.

Mr. FORD.—I thought we did not have to make objections except as to the form of the question.

Mr. WALL.—You can make them whenever you want to.

Mr. FORD.—You are putting them in now in

(Deposition of Hugo Dallman.)

order to show the witness how he should answer, so I object to your making objections here which would indicate to the witness what he should say.

Mr. WALL.—The objection simply comprised what the witness has already said.

Mr. FORD.—I understand that, Mr. Wall, but you ought not, when you have got an intelligent witness like this man, to make suggestive objections to him.

Mr. WALL.—I don't know how I can object to it as not proper cross-examination except by stating the grounds.

Mr. FORD.—The point of it is our stipulation has reserved the objections, and I have got an adverse witness here, and by your making these objections and pointing out to him what he should say it may influence him.

Mr. WALL.—I can put my objections in now or I can put them in when the case comes to trial.

Mr. FORD.—The witness has shown from his manner already that he is hostile.

Mr. WALL.—I do not think so.

Mr. FORD.—Q. Mr. Dallman, you are not working for the same people now? A. No, I know that.

Q. Grace & Company?

A. No, I ain't working for them.

Q. Have you any feeling against Grace & Company?

A. I have got no feeling; the only one I got feeling against is the captain, because he didn't pay my wages, that I had coming.

Q. You say you have some suit pending against

(Deposition of Hugo Dallman.)

the company now [75] for wages?

A. I have a suit against the captain.

Q. Against the captain; so you feel hostile toward the captain?

A. No, I sailed with the captain for two years before I shipped in the "Colusa," and we were the best of friends; he offered me the job; I have got nothing against the captain, but I want to get my money. I will ship with him again if he goes with another company.

Q. Why wouldn't you ship with him in this company?

A. I don't like this run; it is too long ways.

Q. You answer me fairly; you are bright; you do not like this company, do you? You are hostile?

A. I have nothing against the company; I don't like the run.

Q. What did you mean a while ago by the answer you made just before that?

A. Because I don't want to go on that South American run again; I had enough of it.

Q. This company runs ships other places, doesn't it? Grace & Company run a great many ships, don't they?

A. They run to Australia; I am a German and I can't go to Australia.

Q. Where do you live,

A. I live at the Palmer Hotel.

Q. In San Francisco? A. Yes.

Q. Where is your home—where do your father and mother live, or your relatives? A. Germany.

(Deposition of Hugo Dallman.)

Q. Where in Germany? A. In Hamburg.

Q. Where is your home? Have you any regular place that you live?

A. I have got relatives here in 'Frisco, if you would like to know that.

Q. Where is that?

A. They live on Sixteenth Avenue.

Q. What number? A. 466.

Q. Do you expect to leave San Francisco?

A. No.

Q. How long do you expect to remain here?

A. I expect to take out my license pretty soon; I don't have to remain here forever. [76]

Q. You expect to take out your license pretty soon? A. Yes.

Q. How long will that keep you here?

A. I will get my citizen's papers in four or five months; it will take me at least three or four months to go to school.

Q. You will be here for seven or eight months?

A. I will not leave for the next year.

Q. You will be here for the next year?

A. I might take a ship again, go to sea, you know.

Q. What I was getting at is, so that I could get information of how to locate you in case this matter could come on for trial. I would like very much to have you as a witness in court and have you explain that turnbuckle to the court.

A. If you have got no objection, I can go with you now and explain to you about the turnbuckle.

Q. What size nail was this you put in this eye?

(Deposition of Hugo Dallman.)

A. About that size.

Mr. WALL.—Q. About how many inches?

A. About four inches.

Mr. FORD.—Q. Do you know about tenpenny nails, and so on, the size?

A. This is a galvanized nail; that is all I know.

Q. What they call a wire nail?

A. Yes, about that thick.

Q. The nail was about a quarter of an inch thick, and this hole was about three-eighths of an inch?

A. Yes.

Q. Why didn't you get a nail the same size as the hole?

A. I couldn't get it; I sent the boy to the carpenter to get some nails for the turnbuckle, and these were the nails he brought back.

Q. Why didn't you send him back for another one? There were nails there of the proper size, weren't there?

A. I don't know whether there were or not; the carpenter knew all about it.

Q. Didn't you use nails the proper size in these holes?

A. We always used those nails; the carpenter always gave us those nails. [77]

Q. Those are the kind you used all the time?

A. That was the kind.

Q. Were all the turnbuckles on that ship the same make?

A. Pretty near; I think there was a few different ones; there were two different brands.

(Deposition of Hugo Dallman.)

Q. There were two different brands? A. Yes.

Q. But were most of them the same make as this turnbuckle?

A. Yes, the big ones were all that make.

Q. Why did you say that you put in this particular nail? A. Because I put it in there.

Q. You remember it, do you?

A. Yes, I do remember it.

Q. The turnbuckle over at hatch No. 2, did you put the nail through there, when you went over to No. 2?

A. I always done that; I had the nails in my pocket, and after we got the turnbuckle on I put the nail in, and I told them to set them tight afterwards, and we went to the next one.

Q. You always put in the nail yourself at each place?

A. I always done that, every time; I had the nails in my pocket and put them in.

Q. You always used the same sized nail?

A. Yes.

Q. You used that same sized nail this time?

A. Yes.

Q. Was it a new nail or an old one?

A. They were new nails.

Q. When you got back there, did you see what had happened to the turnbuckle?

A. No, I didn't see how it happened.

Q. It was still there when you got back?

A. No, it was carried away, and the turnbuckle was laying down in No. 1 hatch, and this man was down there.

(Deposition of Hugo Dallman.)

Q. That is what I say, the turnbuckle was still there?

A. One end was carried away, and the other end dropped in No. 1 hatch. [78]

Q. Which end carried away?

A. The port chain.

Q. Did the chain that was fastened to the end of the pelican hook carry away?

A. The pelican hook carried away.

Q. You did not see it, though?

A. No, I didn't see how it happened.

Q. Now, then, you answered Mr. Wall that at the time you were fastening this turnbuckle to the chain that the first mate, I think it was, or first officer, whatever you call him, was lifting the anchor, or something of that kind?

A. Yes, lifting the anchor.

Q. Where was he when this accident happened, if you know?

A. The first thing I saw, I heard the man holler, "Go and get this man up," and the mate was standing on the after-part of the forecastle and jumped on the deckload, and came over the forecastle-head.

Q. Who was the man that called you to go and get this man up?

A. The mate, but he was on the forecastle-head when he called.

Q. But you didn't know there had been an accident, did you?

A. No, I didn't know before I saw it.

Q. These other sailors that were with you, were

(Deposition of Hugo Dallman.)

they in the same location?

A. Yes, none of them saw it; they had their backs to it pulling on the tackle.

Q. So that the first thing you knew that Mr. Dunwoody had met with an accident was when the first mate called you? A. Yes.

Q. Do you know a sailor named Pfautsch?

A. Yes, I do.

Q. Was he up there when the accident happened?

A. He was on the next chain with me, just putting the chain on.

Q. He was in the same situation as you were, then, so far as seeing the accident is concerned?

A. Yes, I don't think he saw it.

Q. He was not where he could have seen it?

A. I couldn't make any statement whether he seen it or not; I don't know. [79]

Q. Could you have seen it?

A. If I would have turned the other way I would have seen it, but I had my back turned toward it.

Q. Which way did this man Pfautsch have his back? A. I could not tell.

Q. You don't know whether he was looking or not?

A. There were six men; I couldn't tell how they stood.

Q. Would you say whether Pfautsch was over there with Mr. Dunwoody, or not, at the time the accident happened?

A. No, I couldn't tell you that, either.

Q. You couldn't tell that either?

A. I couldn't tell you exactly where Pfautsch was.

(Deposition of Hugo Dallman.)

Q. Didn't you say a while ago he was there with you?

A. He was there with me, but what he was doing, then, I don't remember.

Q. Would you say he was over with Dunwoody at the time, or not?

A. When I saw Dunwoody he was lying down in the hold; that is all I saw; I don't remember small things like that.

Q. Do you remember that Pfautsch was there with you?

A. I remember that he was there; he was working with me; that is what I remember.

Q. You spoke about these split pins that there should have been for this hook. Did you have any split pins for use in that type of hook?

A. No, because all the other turnbuckles I saw you don't need any nail at all; it would be safe without the nail, because they had an upward slant.

Q. But you have seen others of this particular kind of turnbuckle, others of that make-up?

A. I never worked with a turnbuckle with such a downward slant, and I never saw any other; that is the first time I put on a turnbuckle like that; I remember saying, "This ain't going to hold much." It kept on slipping all the time we put them on.

Q. You took no measures to correct that?

A. There was nothing [80] to be done. The only thing to do is to throw them in the bay and get new ones.

Mr. WALL.—I would like to ask Mr. Ford if he

(Deposition of Hugo Dallman.)

is going to produce the turnbuckle at this hearing.

Mr. FORD.—I was going to ask that the matter be continued because I wanted to get the turnbuckle and have this man identify it and mark it so that in case he is not here it will be identified.

Mr. WALL.—Could you get it this afternoon?

Mr. FORD.—I am satisfied I could not.

A. I couldn't come to-morrow; I have got to make a living; I have got to work.

Mr. FORD.—Q. Where are you working?

A. I am working at the Union Iron Works.

Q. You have a position at the Union Iron Works?

A. If I keep it; if I come back here I will be fired. I don't know how long that will be. If I get a job I will go to sea again.

Q. The turnbuckles on the boat of that make were all alike?

A. Yes, they were all alike. I guess they brought them out from England when the ship came out.

Redirect Examination.

Mr. WALL.—Q. You spoke of the deck lashing having carried away; all you meant was that the pelican hook opened out and the upper deck lashing slipped off the pelican hook? A. That is it.

Q. Now, then, you have taken out your intention papers to become an American citizen, have you?

A. Yes.

Q. And expect to come up for an examination as a licensed officer of merchant vessels of the United States? A. Yes.

Q. As a seafaring man, your home is in San Fran-

(Deposition of Hugo Dallman.)

cisco; that is, this is your home port?

A. I call it my home.

Q. Have you been going to sea out of here for the last five years? [81]

A. Not quite; four years and six months.

Q. You expect, after you get your license, to continue going to sea as a licensed officer? A. Yes.

Recross-examination.

Mr. FORD.—Q. Mr. Dallman, when you said the pelican hook opened up, you did not see it open up, did you? A. I did not see it.

Q. You are only just stating your conclusion, aren't you?

A. Do you think anybody is going to open the hook and take the chance of loosing the deckload, putting the ship in danger?

Q. I am asking you whether you saw it or not.

A. I saw lots of them open up.

Q. Your answer to Mr. Wall would indicate that you saw this particular pelican hook open up which caused this accident. Now, as I understand it, you did not see it at all. A. Which?

Mr. WALL.—I admit that is the witness' conclusion. It was only for the purpose of showing what he meant by his other conclusion, that it carried away; that is, he did not mean as a conclusion that any lashing broke, but what he meant by "carried away" was the conclusion that it had slipped off.

Mr. FORD.—Now, Mr. Wall, I will arrange, if we want Mr. Dallman's testimony further, if we conclude that there is danger of his not being here, to

(Deposition of Hugo Dallman.)

have him identify one of these turnbuckles—I will arrange to get him down here.

Mr. WALL.—Request is also made to produce the turnbuckle before the trial for identification. At this time I want the record to show that I request that Mr. Ford produce it at the trial.

Mr. FORD.—You say all the other makes had this link fitted through another link?

A. Not all of them; but I saw some made that way. [82]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

Certificate of United States Commissioner.

I certify that, in pursuance of stipulation of counsel, on Friday, December 29, 1916, before me, Thomas E. Hayden, a United States Commissioner for the Northern District of California, at San Francisco, at the office of F. R. Wall, Esq., in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared Hugo Dallman, a witness called on behalf of the libelant in the cause entitled in the caption hereof; and F. R. Wall, Esq., appeared as proctor for the Libelant, and George K. Ford, Esq., appeared as proctor for the Respondent; and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition of the witness and the signing thereof was expressly waived.

Accompanying said deposition and referred to and specified therein is “Libelant’s Exhibit 1, Dallman.”

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the clerk of the United States District Court for the Northern District of California, the court for which the same was taken. [83]

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set
my hand in my office aforesaid this 15 day of March,
1917.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, Northern District of
California, at San Francisco.

(Attached hereto is "Libelant's Ex. 1, Dallman.")

[Endorsed]: Filed Mar. 16, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [84]

*In the United States District Court for the Southern
Division of the Northern District of California,
First Division.*

IN ADMIRALTY—(No. 16,129).

Before: Hon. MAURICE T. DOOLING, Judge.
GEORGE I. DUNWOODY,

Libelant,

vs.

American Steamer "COLUSA,"

Respondent.

(Testimony Taken in Open Court.)

Friday, March 16, 1917.

Counsel Appearing:

For the Libelant:

F. R. WALL, Esq.

For the Respondent:

GEORGE K. FORD, Esq.

(The above matter coming on regularly for trial,
the following proceedings were had.)

Testimony of L. L. Williams, for Libelant.

L. L. WILLIAMS, called for the libelant, sworn.

Mr. WALL.—Q. What is your profession?

A. Surgeon.

Q. How long have you been such

A. Since 1885.

Q. Do you hold any government position, Doctor?

A. Yes, senior surgeon, United States Public
Health Service.

Mr. FORD.—Mr. Wall, you need not bother about

(Testimony of L. L. Williams.)

laying any foundation, we admit the qualification of the doctor. [85]

Mr. WALL.—Q. Doctor, you are in charge of the Marine Hospital in San Francisco? A. Yes, sir.

Q. Do you remember Mr. Dunwoody, here, having been admitted to the hospital about the 28th of November, last?

A. On the 28th of November, yes.

Q. Do you remember when he was discharged, Doctor? A. The 15th of December.

Q. Doctor, will you please state to the Court what you did in regard to Dunwoody when he was admitted, what examinations you made and what was found, and what you done for him?

A. He stated that he wished his statement of previous injury—do you mean just what I found?

The COURT.—Q. Just what you found, Doctor.

A. He complained of pain and disability in the left wrist; the movements were limited, quite limited, and the joint rather swollen, and tender on pressure. On examination I found a projecting piece of bone right in front of the wrist, about in this locality. I then submitted him to an X-ray examination, which disclosed the presence of an old fracture, what is known as a Colle's fracture, that is, a fracture of the larger bone of the forearm, just above the wrist joint. The X-ray showed that a part of the lower fragment was projecting forward, that is, it was not in complete alignment. The fracture being united in that position, it was impossible to say whether the lower fragment had tilted or whether this was a sep-

(Testimony of L. L. Williams.)

arate piece of bone, a small, comminuted portion which had not got into line with the rest. The fracture having occurred about two months previously, it seemed possible that it might be refractured so as to permit a little better alignment. The projecting piece was interfering with the action of the tendons moving the wrist joint. So about two [86] or three days after his admission he was etherized and an attempt made to rebreak it. It was found to be too firm for such an operation and that was abandoned. So, several days later, he was again etherized, and an open operation was done, and the projecting portion of the bone was chiseled away so as to permit free use of the tendon. That wound healed in about a week or ten days, and he proceeded to improve, and at the time of his discharge on the 15th he was free from pain, and the wrist joint movement was very much improved. I discharged him with instruction to continue using it from that time quite freely, and probably the movement of the joint would become better. I have not, to my recollection, seen him since.

Mr. WALL.—Q. Doctor, was there any fracture of the other bone? A. No, sir.

Q. It was simply of the larger bone?

A. The larger bone.

Q. Was anything done to reduce the enlargement?

A. You mean at the time that I saw him?

Q. While he was in the hospital?

A. Oh, yes, I just stated that I attempted to rebreak it, but that failed; it was too firmly united to

(Testimony of L. L. Williams.)

break it by any force, so that the only thing to do was to cut away the portion that was interfering with the tendon controlling the action of the wrist joint.

Q. Will you tell what effect that had upon his having free and full use of that left hand and arm?

A. You mean prior?

Q. No, afterwards, when he was discharged.

A. It is a little difficult to say, because it is a matter of the experience of individual patients as to just how much motion he gets after a fracture of that character.

The COURT.—Q. Doctor, he was discharged in December. A. Yes, sir. [87]

Q. He is now present in court; you might examine his wrist now. A. Yes, I will.

Mr. FORD.—Is it all right for me to observe the examination, your Honor?

The COURT.—Oh, yes.

A. He has not complete use of the wrist joint. As you will see with my own, it bends that far. That is apparently the limit of the motion. In that direction it is somewhat limited, but not so much. That motion is distinctly limited. Then the effect of that fracture is to shorten up that bone a little bit. You will notice that the hand is thrown in that direction as compared with the other; that also affects the usefulness to some extent. That is unavoidable in all these fractures, no matter what the treatment is, as a rule. These are difficult fractures to treat at best. They frequently run into the joint. Just

(Testimony of L. L. Williams.)

how much function you get afterwards is problematic. In those that are quite simple and are reduced immediately, you usually get a pretty fair result. It is rather the rule that there is some limitation of the action of the joint afterwards, and some weakness of the hand.

Mr. WALL.—Q. Doctor, what would you say, if anything, as to the horizontal movement of the hand?

A. Well, that is pretty fair. I don't think there is much, if any, limitation in that.

Mr. FORD.—Before the libelant takes his seat, I would like him to exhibit both wrists to the doctor, so that the Court can see them both.

A. It is very apparent, I think, to anyone. Just turn your hand over. The turning of the hand on that side is a permanent condition. You see, there is very little difference in the lateral motion; there is that much difference between them in the forward motion of the hand. In the back motion there is not much, if any, difference. [88]

Mr. WALL.—You may cross-examine.

Cross-examination.

Mr. FORD.—Q. Doctor, you made a report to Mr. Wall under date of January 30th of your examination in this case and your treatment.

A. I think so; Mr. Wall wrote me, at the instance of the libelant, requesting a statement.

Q. When you discharged Mr. Dunwoody on the 15th of December, so far as medical attention was

(Testimony of L. L. Williams.)

concerned, he had had all the medical attention he required, had he?

Mr. WALL.—We don't make any question about that.

Mr. FORD.—Q. What about the result, so far as you are concerned, of your treatment, did you get as good a result as you expected?

A. As good as I had any reason to expect.

Q. Now, as I understand it, Doctor, in one of these Collie's fractures, the surgeon setting the fracture is not able to place the bone in apposition, as if it were further up, so as to get the bone in exact position; you have to rely on its setting, do you?

A. We have to do the best we can. It is not always possible to reduce a fracture, I am very sorry to say.

Q. The surgeon who had set the fracture originally probably did all that could be done, from what you observed?

A. I have no reason to think the contrary.

The COURT.—There is no charge of malpractice, is there, or of improper treatment?

Mr. WALL.—Nothing of the kind. There is no contention here that he did not receive proper medical care or treatment, or that he did not receive proper hospital attention, or that any claim is made for hospital charges, or anything of that kind.

Mr. FORD.—I simply want to show your Honor that the defendant had secured medical attention for this man. [89]

The COURT.—It is admitted.

Mr. WALL.—We admit that; we never set up anything to the contrary.

Mr. FORD.—That is all.

**Testimony of George I. Dunwoody, in His Own
Behalf.**

GEORGE I. DUNWOODY, libellant, sworn.

Mr. WALL.—Q. Give the reporter your full name.

A. George I. Dunwoody.

Q. You are the person who has brought this suit for your damages? A. Yes.

Q. What is your business, what do you do for a living? A. Seaman.

Q. How long have you been following the sea?

A. I should say about seven years.

Q. How old are you now? A. 24.

Q. Up to November of last year, what branch of the sea were you following, that is, were you in the merchant service, or the government service, or what? A. In the merchant service.

Q. Where were you in September of last year?

A. I was aboard the "Colusa."

Q. In what capacity were you serving on board of her? A. Seaman.

Q. What wages were you getting?

A. \$55 a month.

Q. Board and lodging? A. Yes.

Q. Aside from your wages, state what, if anything, you generally earned, and how you earned it.

A. They were paying 25 cents an hour overtime on that ship; it averaged about 75 to 80 hours on the

(Testimony of George I. Dunwoody.)

voyage, a two-months' voyage.

Q. And on the other ships, what overtime would you generally average?

A. On other ships you would average about \$20 a month, ships in the coast service? [90]

Q. Whereabouts on this ship were you working on the day you got hurt, on the "Colusa?"

A. On the port side of No. 1 hatch, on the deck-load.

Q. On top of the deckload? A. Yes, sir.

Q. Where was that No. 1 hatch with reference to the foremast?

A. It is right after of the foremast.

Q. What were you doing up there?

A. I was setting up the turnbuckle.

Q. Now, go ahead and tell the court everything that happened to you, what you were doing and what happened to you.

A. Well, while they were pulling these chains together with a tackle I was down getting a stillson wrench; when I came back with the stillson wrench they had the two chains pulled together at that time.

Q. Just tell the court how those chains were rigged, and what there was in between the two ends amidships, or where you were?

A. There was a turnbuckle.

Q. How did the deck lashing fasten on the star-board side of the "Colusa" to the "Colusa's" deck? How was the deck lashing fastened to the deck?

A. It is shackled into a ring bolt.

(Testimony of George I. Dunwoody.)

Q. And from there how did it get into the deck-load?

A. It came straight up and over the deckload.

Q. And the same way from the port side?

A. Yes, sir.

Q. What was in between the two inboard ends of the deck lashing?

A. This turnbuckle, with a pelican hook in it.

Q. Just describe to the court what that turnbuckle and pelican hook were like?

Mr. WALL.—I will show your Honor this photograph. It may help you some. [91]

The COURT.—We can get a better idea of it if this is a correct representation—from this photograph.

Mr. WALL.—That is like it in a general way.

Mr. FORD.—I attempted to get a turnbuckle and get it in here to-day. I don't know whether I can produce one, or not.

Mr. WALL.—Q. I show you that picture, Fig. 7, which shows two views of a turnbuckle. How much of the turnbuckle that was in use was in its general nature like that? Just examine that and see it. There are one or two sketches in the other testimony that show the appearance of the turnbuckle.

A. It was the same kind of a turnbuckle—the same kind of pelican hook, only this hook here was much shorter than that; the hook came within about three inches of the end of the link, here.

Q. The pelican hook was much larger than this, the hook came to within only about three inches of

(Testimony of George I. Dunwoody.)

the end of the link? A. Yes, sir.

Q. Did it have a ring that fits over the top of it?

A. The pelican hook was in the turnbuckle just like that.

Q. And did it have a ring over the pelican hook?

Mr. FORD.—While I have not seen this turnbuckle, I understand that the figure is not a good illustration at all of the one in question.

Mr. WALL.—You say it is not?

Mr. FORD.—No, I understand not.

Mr. WALL.—You folks have the turnbuckle.

Mr. FORD.—Mr. Palmer has a picture of it that he drew. He is not any more of an admiralty lawyer than I am, and I don't know how well he did it.

Mr. WALL.—Q. How was the bottom of the pelican hook fastened to the rest of the hook?

A. It is in a link.

Q. When the ring is taken off the top of the pelican hook, would [92] the pelican hook drop down?

A. Yes, sir.

Q. Swiveling or piveting on this link?

A. Yes, sir.

Q. Over the top of the ring, what was there, if anything, that passed through the pelican hook?

A. A forelock or pin—a nail, in this case.

Q. A forelock, or nail?

A. A nail is what we used on that ship.

Q. Now go ahead and tell the court what you did and what happened to you?

A. After I came up on deck with this stillson wrench I asked the boatswain if he wanted me to go

(Testimony of George I. Dunwoody.)

and get a forelock; he said, "No," that "The deck boy has one"; he called him—Heine by name, I think—

The COURT.—Q. By the "forelock," you mean that pin? A. Yes, sir.

Mr. WALL.—Q. That nail.

A. The nail. I stood back until the boatswain finished connecting the pelican hook and the other chain together, the port chain; then he told me to go ahead and set it up so I just reached down and got the stillson wrench and started to setting it up.

Q. Do you know who put the nail in there?

A. Yes, sir, the boatswain did.

Q. Now go ahead.

A. As soon as they got the two chains together—

The COURT.—Q. By "setting it up," just what do you mean, turning that screw around?

A. Yes, sir.

Q. That tightens the lashings?

A. Yes, sir. You open the screws out as far as you can and then you screw them up.

Q. You didn't commence setting up until the pelican hook had already been set to the point placed by the boatswain? A. Yes, sir, everything was all connected when I started turning on the turnbuckle.

Mr. WALL.—Q. Now, go ahead from that point.

A. As soon as he [93] told me to set it up, all the men left and went forward of the No. 2 hatch to set up the rest of the lashing. I sat down on the edge of the deckload and started to setting it up—

The COURT.—Q. The ends of the lashing came

(Testimony of George I. Dunwoody.)

together on the edge of the deckload?

A. Yes, sir, right on the edge of the deckload.

Mr. WALL.—Q. How far out did you have to reach from the edge of the deckload to set up the turnbuckle?

A. About two feet, I should say.

Q. All right, now go ahead from that point.

A. The next thing I was down in the hold, and I sung out and the mate asked me if I was hurt, and I told him I was; I told him I thought my leg was broken, and my arm; I told him I knew my arm was broken, and I said I thought my leg was broken. So he called the rest of the men over and they put a ladder down and one of the sailors helped me aft into the forecastle. I guess that was about seven o'clock in the morning. About eleven o'clock we arrived in Talara.

Q. What distance was it from the top of the deckload to where you fell?

A. I should say about fifteen feet.

Q. Who brought you up out of the hold, if you know?

A. The boatswain and one of the sailors.

Q. What injuries did you receive by your fall?

A. A broken arm and a sprained ankle.

Q. Tell the court fully what pain, if any, you suffered by reason of those injuries?

A. I suffered quite a lot with my ankle for about a week, or a week and a half; then I began getting pains in my arm. My ankle was hurting me worse at first than my arm. After my ankle got all right,

(Testimony of George I. Dunwoody.)

my arm began to bother me then.

Q. How long did that continue to pain you?

A. It continued for about four months afterward.

[94]

Q. State whether you still have any pain there, and if so what?

A. I have pains there when I bend my hand back and put any weight on it, like trying to lift myself up with the palm of my hand.

Q. What was the vessel doing at the time you got hurt, was she at anchor or under way?

A. She had just been under way I should say about two or three minutes; the anchor had just got up and they were securing it.

Q. Where had she been anchored just prior to the time you got hurt? A. I got hurt in Paita.

Q. What sort of a roadstead or harbor was it where you were anchored?

A. It is an open roadstead.

Q. Open to the sea, do you mean? A. Yes, sir.

Q. How far was she from shore where she was anchored, to the best of your judgment?

A. I should say about a mile and a half or two miles.

Q. Then, as I understand you to say, she had just got up anchor and starting to another port?

A. Yes, sir.

Q. And you went to that port, and there you were taken on shore and received medical treatment from some doctor there, is that correct?

A. I stayed at the captain of the port's house until

(Testimony of George I. Dunwoody.)

about six o'clock that night.

Q. Well, never mind about that, that is not material; we will get to the material parts of it. The vessel continued on her voyage, and finally got back to San Pedro? A. Yes, sir.

Q. And you left her at San Pedro and came up to San Francisco, did you not? A. Yes, sir.

Q. You got what they call a ticket from the shipping commissioner and went out to the Marine Hospital? A. Yes, sir.

Q. And received treatment there and left there on December 15th? A. Yes, sir.

Q. From December 15th how long did you remain on shore? [95]

A. I should say about five weeks, a little over five weeks, I believe it was.

Q. Why did you remain on shore?

A. I was not able to go to work.

Q. Why were you not able to go to work?

A. I didn't have no control of my hand, no strength in it.

Q. During the time you were on shore, what expenses were you at for your living?

A. Do you mean how much?

Q. How much did it cost you for your room and your meals?

A. I was paying \$2 a week for a room; it cost me about 85 cents to a dollar a day for eating.

Q. Did you have to pay for your laundry?

A. Yes, sir.

Q. What did that average a week?

(Testimony of George I. Dunwoody.)

A. That averaged about a dollar and a quarter a week.

Q. When you were able to go to sea, what did you do? A. I went as a sailor.

Q. Where? A. On the "Bear."

Q. That is in the Coast Guard Service?

A. Yes, sir.

Q. You enlisted on the "Bear?" A. Yes, sir.

Q. For how long a time? A. One year.

Q. What are your wages on the "Bear?"

A. \$44.40 a month.

Q. Why didn't you continue in the merchant service instead of enlisting on the "Bear?"

A. I didn't have strength enough to work in the merchant service; it is heavier work in the merchant service than it is in the government service.

Q. What did you have to pay for your clothing outfit when you joined the "Bear?"

A. You have to pay for all that you get; you have to have a regulation amount of clothes. They allow you a little time to get money enough to pay for that, though.

Q. What has the outfit cost you?

A. It has cost me a little [96] over \$30 so far, but I haven't got nearly all of my clothes yet.

Q. What is the fact as to whether your expenses for clothing while you are on the "Bear" will be greater or less than in the merchant service?

A. Greater.

Q. Can you make any estimate of what the difference will be?

(Testimony of George I. Dunwoody.)

A. Well, it will cost about \$30 in the year more in there than it would in the merchant service.

Cross-examination.

Mr. FORD.—Q. Mr. Dunwoody, this position you have on the "Bear" is in the government service, as I understand it. A. Yes, sir.

Q. Generally speaking, is that a better position than the one you had on the "Colusa," or not?

A. It is easier.

Q. And how about it among the sailors, would they consider that a better job, or the one on the "Colusa" a better job?

A. You don't get near as much money; it is easier but you don't get so much money.

Q. You don't have any overtime on the "Bear."

A. No, sir.

Q. You stated to Mr. Wall that you left the ship down at San Pedro.

A. Yes, sir, I did.

Q. You left of your own accord, did you?

A. No, sir, I was told to go ashore.

Q. You were told to go ashore?

A. Yes, sir, by the captain.

Q. And did he tell the other men to go ashore, too?

A. He told one man that I know of.

Q. All of you left there, didn't you?

A. Yes, but I only know about one other man and myself.

Q. So far as you were concerned, you did not leave of your own accord?

A. No, sir, I didn't want to leave, because I wanted

(Testimony of George I. Dunwoody.)

to come back here anyhow and I would be just the money out for my passage up.

Q. Then it is not true that you and all the other sailors left at San Pedro? A. Yes, I left there.

[97]

Q. And didn't the others leave? A. Yes.

Q. They left at the same time you did?

A. Yes, sir.

Q. And didn't you and they come up here together—some of them? A. Yes, sir.

Q. With reference to setting up this turnbuckle, when you started with your stillson wrench to screw up the turnbuckle did you look to see whether or not the pin had been inserted in the pelican hook?

A. I did.

Q. And what did you see? A. I saw a nail.

Q. What kind of a nail did you see?

A. A nail about three inches long, I should say, or two and a half inches.

Q. Do you know about the size of nails?

A. No, I don't know about the penny sizes, how they go.

Q. How was that nail as compared with nails you had usually seen used in the pelican hook, was it the same size nail as you had seen used all the time?

A. No, sir, it was smaller.

Q. Did you notice whether it was fastened in there in any way, or not?

A. There is no way to fasten it; you just put it in there. That is the way they always put them in in the ship before.

(Testimony of George I. Dunwoody.)

Q. You saw, though, that this nail was loose?

A. No, sir, I didn't see that it was loose.

Q. You say you saw that it was a small nail?

A. Yes, but some of those holes are larger in some of the pelican hooks.

Q. You made no examination to see whether it fitted snug, or not, did you? A. No.

Q. And you didn't notice whether it had been kinked, as if it had been hit by a hammer, or not?

A. No, sir, it could not have been; they would come right apart if you bent the nail.

Q. The ring is slipped over when you put the nail in, is it?

Q. Yes, sir, it is, but if you bend the nail the ring would slip over the end and the nail, too; it would have to be straight to [98] hold the link on there.

Q. The nail that is usually used in the pelican hook, what size nail do they usually use there? Would they stay in all right?

A. They always did before, except a couple of times that I know of that they slipped; but it was on a level deckload, there were no accidents, or anything; I have saw them slip a couple of times before that.

Q. While you were lashing up this deckload at the No. 1 hatch, who was with you there, if anyone, while you were working with the stillson wrench?

A. Nobody; I was there myself.

Q. Where was the first mate?

A. The first mate was just coming off the fore-castle-head; he was in the eyes of the ship when I first stooped down to pick up the stillson wrench, and

(Testimony of George I. Dunwoody.)

I raised up and I looked forward, and the first mate was just starting to walk aft.

Q. There was nobody there but yourself, then, when you started turning up this turnbuckle?

A. No, sir.

Q. The other men had gone back to another part of the deckload? A. No, sir.

Q. You don't know yourself what happened, do you? All you know is you went down into the hold?

A. Yes.

Q. How high was this deckload? How high did the lumber stand on the deck?

A. The lumber on the deck?

Q. Yes.

A. The lumber on the deck was about—I should say eight or ten feet, eight or nine feet.

Q. Eight or ten feet high? A. Yes, sir.

Q. Do you know how much of a load the ship had?

A. No, sir; it was right even with the forecandle-head.

Q. So you fell these eight or ten feet down, as far as the deck, and you fell whatever distance there was down into the hold? A. Yes, sir. [99]

Q. How far below the hatch was the load in the hold? A. About six or seven feet.

Q. Who told you and the other men there to lash this load of lumber up?

A. The boatswain gave me orders to set up the turnbuckle.

Q. He is the one who told you to do it?

A. Yes, sir.

(Testimony of George I. Dunwoody.)

Q. That is, when you came back there with the stillson wrench, he had put the nail in himself?

A. Yes, sir.

Q. You saw him put it in?

A. I saw him put it in.

Q. You stood there and saw him put it in?

A. Yes, sir; I was standing right near him, right behind him.

Q. And he told you to set up the turnbuckle?

A. Yes, sir.

Q. And he and the other men went away?

A. Yes, sir.

Mr. WALL.—That is the libelant's case.

The COURT.—That, with the depositions.

Mr. WALL.—With the depositions, your Honor.

Mr. FORD.—Now, your Honor, as to the depositions—as to the deposition of the one I mentioned first, Carl Pfautsch, there is no objection to that deposition. As to the deposition of Dallman, which was taken on the 29th of December, 1916, we do object to its use for the following reasons: First, that there is no showing made that the witness is absent from the jurisdiction of this court; second, that it appears from the face of the deposition, from the conversation between counsel, that it was expected that this particular witness would be produced personally if he was not at sea at the time the trial came on. I have not had an opportunity personally to look over the deposition, but my recollection is very clear on the matter that on cross-examination I pointed out to the witness and

(Testimony of George I. Dunwoody.)

to Mr. Wall both that as [100] to this particular witness we desired him in court. I presume there is no dispute between Mr. Wall and myself but that the witness is in town to-day.

Mr. WALL.—I don't know whether he is in town, or not; I don't think it makes any difference. There was a stipulation that this testimony, when written out, may be read in evidence by either party at the trial. It appears from the deposition that if the witness was wanted by Mr. Ford that Mr. Ford would produce him; and Mr. Ford had ample opportunity to produce him, if, as he says, he knows he is in town. He cannot make the objection at this time. If he knew he was in town, and he knew he was going to make this objection, he should have made it before; he cannot make that objection at this time. The libellant is suing as a pauper. He has gone to the expense—at least his counsel has for him—to take that testimony. There is no presumption that if the man was produced here he would swear otherwise than he has sworn; in fact, all the presumptions are to the contrary. If counsel on the other side thought he would do it, he should have produced him here for cross-examination. There is no reason at this time why we should be met with an objection of this character; it is unusual and unheard of.

The COURT.—The objection is overruled.

Mr. FORD.—I want to say, Mr. Wall, that I did not know that Mr. Dallman was in town until nine o'clock this morning.

(Testimony of George I. Dunwoody.)

Mr. WALL.—And Mr. Dallman told you in his deposition where he was working, and that he expected to continue working there.

Mr. FORD.—I just got from the reporter this morning this testimony. I expected to have the testimony written up before and then I could have gotten the addresses of these witnesses; I presume it was my fault that it was not written up. [101]

The COURT.—Any testimony on the part of the respondent, other than the depositions?

Mr. FORD.—Oh, certainly, your Honor.

The COURT.—Let us have it.

Mr. FORD.—We offer in evidence the deposition of John Bergstrom, the first mate of the steamship "Colusa." I had assumed that the depositions would be read, and, therefore, I am not prepared with my witnesses; I expect to have them here this afternoon.

The COURT.—There will not be any witnesses this afternoon; the case was set for to-day and was to be tried in half a day.

Mr. FORD.—I didn't know that. It is a case that will take all day. I didn't know anything about its going to be half a day case; it will take me more than half a day to put in our testimony.

The COURT.—Well, it will take you a week unless you commence.

Mr. FORD.—We offer this deposition in evidence.

The COURT.—Very well, the deposition is in evidence.

(Testimony of J. Cribbin.)

Mr. FORD.—I will not quarrel about the other deposition matter; as I have said, I am a stranger in this court, and in admiralty matters; I will know better the next time.

Testimony of J. Cribbin, for Respondent.

J. CRIBBIN, called for the respondent, sworn.

Mr. FORD.—Q. Where do you reside?

A. 228 Brannon.

Q. What is your business or occupation?

A. Supercargo, W. R. Grace & Co.

Q. How long have you been connected with W. R. Grace & Co.?

A. I have been connected with them now for two years.

Q. Are you acquainted with the steamship "Colusa"? A. I am.

Q. And the appliances used on the ship?

A. I am.

Q. Have you had occasion to use them?

A. I have. [102]

Q. Do you know the type of turnbuckle used there? A. I do.

Q. Will you state to the Court whether that is a standard make?

A. It is a standard make, the same as any other ship has.

Q. Do you recall the type of turnbuckle that has a point that goes through the end of the pelican hook to keep the link from slipping off? A. Yes, sir.

(Testimony of J. Cribbin.)

Q. How is that particular appliance, as to whether it is standard?

A. Well, there are some of them made that way, and some—

Mr. WALL.—I object, that there is no proper foundation laid that this man is an expert.

Mr. FORD.—I will lay the foundation.

Q. You have stated what your business is; do you have occasion to use, in your business turnbuckles?

A. Sure, on deckloads, to lash the deckloads.

Q. To what extent have you had experience with turnbuckles? A. On every ship.

Q. For how long a period of time have you been using them?

A. Well, I have had that experience for over two years, on every ship.

Q. On every ship?

A. On every ship that we handle.

Q. How many ships do you handle?

A. A year?

Q. Yes, say in a year.

A. Well, it all depends on the trade; take, for instance, last year we had fourteen ships running; this year we only have six on this coast.

Q. And you are using the turnbuckles on those ships all the time?

A. All the time when they are coming south.

Q. Will you describe to the Court the different types of turnbuckle that are used, if there is more than one type?

(Testimony of J. Cribbin.)

Mr. WALL.—I object to that as immaterial; the only question is what type was used here. [103]

Mr. FORD.—Your Honor will see when you read the deposition—

The COURT.—Let us have the testimony.

A. This turnbuckle that the “Colusa” has is a turnbuckle—and there is another turnbuckle that kind of has the hook on it that is beveled, that will fit on the rod; this “Colusa” is more of a straight hook; that is the one that has the pin in it.

Q. The turnbuckles that are beveled, do they have a pin? A. No, they don’t have any pin.

Q. Which of the two turnbuckles would be the least likely to slip?

A. I never found any of them to slip; in fact, when we let go the lashings, which we always have occasion to do when they come down from Puget Sound, the lashings are always across the hatch, where the hatch is open, we always have to hit that link and loosen it.

Q. That is, in your experience with this particular class of turnbuckle, the link will stay there until you knock it off?

A. Yes, with a block of wood, or something; it never slipped off with us. We always have to hit it to get it off.

Q. In the last two years how many occasions have you had, or the men under you, to use a turnbuckle in lashing up the deck?

A. That is pretty hard to say. Every ship that

(Testimony of J. Cribbin.)

comes down from Puget Sound that we handle and that is going to South America, we have to do the same thing.

Q. What is used as a pin to go over that hole in the turnbuckle, usually?

A. We don't use the pin. We tie it up with what we call a rope yarn, or a small marline we tie that up with a rope marline—that is a small piece of rope; we never use a pin in there; in fact, the only thing that could be used would be a nail.

Q. Do you know what size nail?

A. A three-inch nail. [104]

Cross-examination.

Mr. WALL.—Q. You say you are supercargo?

A. Yes, sir.

Q. That is to say, you have the regular duties of a supercargo on board ship; you act as a purser now, do you?

A. No, I have charge of loading; I don't travel with the ship.

Q. Is not a supercargo a person that goes on board the ship and acts as a purser?

A. That is what the dictionary defines it as, they travel with the ship.

Q. Your duties correspond with those of a purser?

A. I superintend the loading of the ship. I am titled as a supercargo. I do not travel with the ship.

Q. How many different types of turnbuckles were on the "Colusa" on this voyage, if you know?

A. One that I know of.

(Testimony of J. Cribbin.)

Q. Do you know that there was more than one?

A. I would not swear there was more than one, but there was one that I know of.

Q. You would not swear there was more than one; there might have been more than one?

A. As far as I can recollect there was only that kind on there; that is the only kind I have seen on there.

Q. So far as you personally know there might have been more than one?

A. There might have been one or two of the other type; that I would not swear to.

Q. And your method of securing a turnbuckle is to tie it up with a rope marline, or rope yarn, or something of that nature?

A. Yes, and we never find any that will slip off; we have to knock them off.

Mr. WALL.—I move that the latter part of the answer be stricken out as not responsive to the question.

The COURT.—Well, he has only repeated it. It may go out.

Q. When it does slip off there is something the matter with it then?

A. Yes, your Honor, but we never found it to slip off. [105]

Q. I know, but I say, if it does slip off, it is because there is something wrong with it. A. Oh, yes.

Testimony of Harry Stremmel, for Respondent.

HARRY STREMMEL, called for the respondent, sworn.

Mr. FORD.—Q. Where do you reside Mr. Stremmel? A. 1148 Church street, San Francisco.

Q. What is your business or occupation?

A. Foreman for the California Stevedoring & Ballast Company.

Q. In your work as foreman for the stevedoring company, have you had occasion to do any work in connection with the steamship "Colusa"?

A. Yes, sir.

Q. Do you know the type of turnbuckles used on the "Colusa"? A. Yes, sir, I do.

Q. The type of turnbuckle that has a pelican hook that the link slips through and then a pin goes through the end of the hook?

A. Well, I am not sure about the pin; I have loaded and discharged the "Colusa" this last year four or five different times.

Q. What did you find with reference to the turnbuckles and appliances on the "Colusa"—I will withdraw that. How long have you been working in this line of business?

A. I have been with the California Stevedoring & Ballast Company for a year and a half this time.

Q. And what were you doing before that?

A. I went to sea.

Q. Were you ever a sailor?

A. I have been a sailor, yes.

(Testimony of Harry Stremmel.)

Q. And then you went up, I presume, further in the occupation? A. Yes, sir, I did.

Q. What was your business when you were last at sea?

A. I was chief officer of the steamship "Northern Pacific." [106]

Q. For about how many years have you had to do with ships? A. 19 years.

Q. From your observation of the appliances on the "Colusa," can you state whether or not they are standard, particularly with reference to the type of turnbuckle used there?

A. Well, in my judgment they are standard.

Q. Is there more than one type of turnbuckle used on ships?

A. Well, there may be; they are not all exactly alike. There may be minor little differences in the construction of a turnbuckle.

Q. Do you recall that you used any of this type of turnbuckle that has a hole through the end for the pin that the link slips over so as to hold the link from slipping off?

A. I cannot remember whether I ever saw a hole in the end of the pin.

Q. The ones you saw, you never remember of seeing that hole used at all; is that the idea?

A. No.

Q. What holds the link on?

A. The strain on the turnbuckle holds the link on.

Q. As I understand you, then, when the turnbuckle

(Testimony of Harry Stremmel.)

is screwed up and the strain comes onto the pelican hook, it, of itself, holds the link on?

A. The more strain you get on the chain, on the turnbuckle, the tighter the ring is on.

Q. How is the link kept on until you get the strain on the turnbuckle?

A. It is slipped on and then the turnbuckle is set up.

Q. What is there to prevent its slipping off while you are setting up the turnbuckle?

A. Nothing at all.

Q. How about the man who is turning it up, can he see if it is slipping off?

A. Yes, if he is watching the ring he can see if it is slipping, I suppose.

Q. In your experience, have you ever seen a ring slip off the pelican hook of a turnbuckle?

A. No, I never seen one slip off, unless it is knocked off. [107]

Q. You say in the last year you have worked on the "Colusa" four or five times?

A. In 1916, yes, sir.

Q. And during that time you say you used the turnbuckles?

A. Yes, I have had men set up the turnbuckles. Whenever a ship came into port to load or discharge cargo, as a rule we have to let go the deck lashings that were leading across the hatch, so that we could work, and then after the ship was loaded we had to set up the turnbuckle again.

(Testimony of Harry Stremmel.)

Q. The man who is screwing up the turnbuckle so as to bring the load up tight, what would be the situation so far as he is concerned, as to whether it is necessary to pay any attention to the link, to see whether it does slip, or not?

A. Well, my men never pay any attention to it so far as I know, but just slip the ring back as far as we can, and then set up the screw to tighten up the chain.

Q. Would this link and the pelican hook be in your view while you are tightening up?

A. Oh, yes. As a rule we have—Well, we put in a stick to keep the chain from turning, and then a man takes an iron rod to go through the hole and it keeps on turning; of course, it don't touch the ring until after it is slipped over the hook.

Q. Just describe to the Court what you mean by putting a stick in to keep it from turning?

A. When you start the turnbuckle, if you get a strain on there the chain is liable to turn, too.

Q. Where do you put the stick?

A. In one of the links, but you never touch the ring at all; you simply put the stick in the link to keep the chain from turning around.

Q. For instance, if your man was tightening up the turnbuckle, and this link happened to come in contact with some object upon which it is resting, might that pull the link off if the man did not [108] watch it?

A. Well, it has to be almost forced off if there is

(Testimony of Harry Stremmel.)

any strain on there at all; of course, it is very easily slipped off if the chain is not tight.

Q. That is what I am getting at. While you are tightening up the chain, is it necessary for a man to pay any attention to the link to see whether it slips, or not?

A. We never pay attention to it at all; my men always set up the chain without using any pins, or anything like that. I don't know what they do after they leave port.

Q. Just illustrate to the court about what the size of one of the turnbuckles is, that is, from end to end?

A. When it is screwed out some run from about four to five feet; after it is set up, the screws are together, and it sets up to about 3 or 3½ feet.

The COURT.—Q. How much play is there altogether, about a foot and a half?

A. A foot and a half, yes, sir.

Mr. FORD.—You may cross-examine.

Cross-examination.

Mr. WALL.—Q. You don't know anything about the particular turnbuckle that is involved in this case, do you, if there is a particular turnbuckle involved in this case? Personally you don't know what particular turnbuckle was involved in this case, do you, of your own knowledge?

A. No, I have not paid particular attention to the turnbuckles on the "Colusa." As far as I remember they are the same as other ships I have been on.

Q. You did not pay any particular attention to

(Testimony of Harry Stremmel.)

the turnbuckles on the "Colusa"? A. No.

Q. And so far as you know there may be two types of turnbuckle, or more than two types, in use on the "Colusa," so far as you personally know?

A. I don't know about two types of turnbuckles. There may be a little difference in the construction of a turnbuckle, but as a rule they are all the same; they are all of the [109] same type of construction.

Q. In some turnbuckles, don't they secure them with marlines or ropes? Is there not an arrangement at the end of the pelican hook for that?

A. No, my men never did that.

Q. Your men never did that on the "Colusa?"

A. No.

Q. So far as you know it was never done that way on the "Colusa"?

A. No, and so far as I know it was never done on any ship I have been on.

Q. What times were you at work on the "Colusa," do you remember, during 1916?

A. I don't remember the dates, but it is five or six different times.

Q. Was it after the last of September?

A. The last time I worked on her was in February.

Q. Of this year? A. This year.

Q. And the times before?

A. Well, every two months when she was on the South American run, she would make a round trip about every two months, on an average.

(Testimony of Harry Stremmel.)

Q. Did your gang of stevedores have charge of the loading and unloading of her when she was in San Francisco?

A. We done the work, yes; my men done the work of loading and discharging the cargo.

Q. While she was in San Francisco?

A. Yes, sir.

Q. All the turnbuckles, so far as you know, the link was kept on by the strain; is that correct?

A. The link is kept on, the more strain you get on the chain—the tighter you set up the chain the tighter the link sets onto the hook.

Q. And the turnbuckle that you know of, you didn't use a pin through the top of the link to keep it on; is that right?

A. No, I never saw a pin used yet. [110]

Redirect Examination.

Mr. FORD.—Q. You have, though, seen turnbuckles with a hole in the end of the pin, haven't you?

A. I don't know; I didn't pay any attention to them. In fact, I know there are turnbuckles that have not got holes.

Q. Most of them have not got holes?

A. All the turnbuckles that I have seen, so far as I know have not got any.

Q. There is one other question I overlooked asking you. Prior to the first of this year, and, say, for the six or seven months before that, did you or not unload the "Colusa" each time she was in port?

(Testimony of Harry Stremmel.)

A. Every time.

Q. So that when the "Colusa" arrived here, if she did arrive here some time in November, 1916, did you or not unload her then? A. Yes, sir.

Mr. WALL.—We object to anything after September.

Mr. FORD.—I didn't know the date exactly that she arrived here; I was just getting at whether he unloaded it on those occasions.

Q. On the occasions when you did unload the "Colusa" in 1916, and in the early part of 1917, you did have occasion to handle the turnbuckles?

A. Every time, practically, when the ship came from Puget Sound, from the north.

Q. Do you remember unloading it at any time when she came from the south?

A. Yes, I have discharged her every time she came from the south, too; in fact, every time the "Colusa" was in port last year I loaded her and discharged her.

Q. With reference to the turnbuckles which you used on those occasions on the "Colusa," can you say whether or not they were of standard make?

Mr. WALL.—That is objected to as not proper rebuttal; it already has been gone into in full. [111]

Mr. FORD.—All right. That is all.

Mr. WALL.—No further questions.

Mr. FORD.—That is our case, your Honor. There is one question, though, that I want to ask Mr. Dunwoody.

**Testimony of George I. Dunwoody, in His Own
Behalf (Recalled).**

GEORGE I. DUNWOODY, recalled for further cross-examination.

Mr. FORD.—Q. Before you went to work on the "Bear," did you take an examination?

A. Yes, sir; I did.

Q. Who examined you? A. The doctor.

Q. And you were passed, were you, for service on the "Bear?"

A. He told me there was no heavy work to do there and he thought—

Q. Did the doctor pass you for service on the "Bear?" A. Yes, sir; he did.

Mr. WALL.—Q. Prior to that, did you try to get any other job in the government service?

A. Yes, I tried to get on an Army transport, on the "Logan."

Q. Why didn't you get the job?

A. The doctor wouldn't pass me, he said I didn't have enough grip in my hand.

Mr. FORD.—Q. When was that?

A. That was about a week before I went on the "Bear."

Q. When did you go on the "Bear?"

A. I cannot say the exact date.

Q. About when?

A. About the 27th of January.

Mr. FORD.—Your Honor understands I am rest-

(Testimony of George I. Dunwoody.)

ing the case because your Honor said we could not go on this afternoon.

The COURT.—Well, you have a good portion of the forenoon that you might put in in introducing testimony. [112]

Mr. FORD.—It did not occur to me that the depositions were not to be read, otherwise I would have had other witnesses here.

The COURT.—What else do you want to show?

Mr. FORD.—It would be very largely along the lines I have mentioned, by showing that these appliances were standard.

The COURT.—I guess there is no question about the fact that these were standard appliances. The only question here is whether this particular one was defective. Your testimony would be cumulative. I have no desire to shut you off from any defense, but you must remember that we run here under high pressure; when a case is set for trial we inquire how long it will take to try it and we try to keep within those limits.

Mr. WALL.—If Mr. Ford will state what he expects his witnesses to testify to I would probably admit that if they were produced they would testify, subject to all legal objections.

Mr. FORD.—I intended to call a couple of other witnesses on this same line and one who could identify the particular type of turnbuckle, so as to show there was no defect in that type of turnbuckle, and that it was absolutely up to standard, and, if used as

(Testimony of George I. Dunwoody.)

common sense would require it should be used, was a little above standard. I also had intended, when I saw that Mr. Dallman was in town this morning, to get him at noon to-day and have him produced here.

Mr. WALL.—We will admit that if those witnesses were produced they would, as Mr. Ford says, so testify, except as to the fact as to the defect of the particular turnbuckle; of course, as to that, the testimony offered by Mr. Ford we would not consider that we have agreed to admit anything unless the witnesses who knew about this particular turnbuckle were produced.

The COURT.—I understand that your testimony, if produced, would simply be cumulative to that already given, that this was a standard [113] type of turnbuckle in use on the "Colusa"; but they would not undertake to say anything about the particular turnbuckle in question here.

Mr. FORD.—No, your Honor, but connected with the depositions—

The COURT.—I understand that, but the witnesses would not. I am speaking what their testimony would be.

Mr. FORD.—We have no witness who would say he used this particular turnbuckle. It is only one of a type of 40 or 50 that were on the ship.

The COURT.—And I understand that Mr. Wall will admit that your witnesses, if called, would so testify.

Mr. FORD.—And there is one other matter that I wanted to see Mr. Dallman about, but I will rest on that.

(After argument by counsel the cause was submitted.)

[Endorsed]: Filed Jul. 26, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [114]

At a stated term of the District Court of the United States, for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 16th day of March, in the year of our Lord, One Thousand Nine Hundred and Seventeen. Present: The Honorable MAURICE T. DOOLING, Judge.

No. 16,129.

GEORGE I. DUNWOODY,

vs.

Am. Steamship "COLUSA," etc.

Minutes of Court, March 16, 1917—Hearing.

This cause came on regularly this day for hearing of the issues herein. F. R. Wall, Esq., was present as proctor for and in behalf of libelant. George K. Ford, Esq., was present as proctor for and on behalf of respondent and claimant. Mr. Wall and Mr. Ford made respective statements as to the nature of the action herein. On motion of Mr. Wall, the Court ordered that all witnesses to be called herein, except when under examination, be excluded from the court-

room during the taking of testimony. On motion of Mr. Ford, further ordered that respondent be allowed to file Amendment to Answer herein. Mr. Wall called Dr. L. L. Williams and George I. Dunwoody, each of whom were duly sworn on behalf of libellant and examined, and introduced in evidence the depositions of Carl Pfautsch and Hugo Dallman, and thereupon rested libellant's cause. Mr. Ford introduced in evidence the deposition of John Bergsten and called J. Gribbin and Harry Stremmel, each of whom was duly sworn on behalf of respondent and claimant. The cause was then argued by respective proctors and ordered submitted. [115]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY.—No. 16,129.

GEORGE I. DUNWOODY,

Libellant,

vs.

The American Steamship "COLUSA," etc., and
GRACE STEAMSHIP COMPANY, a Corporation,

Libelees.

(Opinion and Order for Entry of Decree in Favor of Libelant.)

F. R. WALL, Esq.

Proctor for Libelant.

GOODFELLOW, EELLS, MOORE & ORRICK,

Proctors for Libelees.

Libelant was injured while a seaman on board the Steamship "Colusa," because of the flying open of a pelican hook on the turnbuckle with which he was lashing a deckload of lumber. The hook was jointed so that it could open and close, and to hold it in place when closed, a ring was slipped down over its top, the ring being on the shank or immovable portion, and when slipped over the top of the movable portion held it fast to the shank and prevented it from opening. Near the point of the movable portion there was a hole through the hook in which, when the ring was in place a pin should be inserted, the protruding ends of which would keep the ring from slipping off over the end of the hook, and thus insure that the hook would not open when pressure was put upon it by means of the turnbuckle.

The contrivance was perfectly safe to use so long as the pin was in place, and kept the ring from slipping off. Instead of a split-pin which might be spread so that it would not slip out of the hole when the turnbuckle was turned, a nail was used on the day of the accident which slipped out of the hold when the head of the nail was brought to the lower side in turning [116] the turnbuckle. This released the ring, and it in turn slipped off the hook, the hook

opened releasing the lashings, and the recoil of the lashings threw the libelant from the top of the lumber where he was at work turning the turnbuckle. He was thrown through an open hatchway into the hold and sustained serious injuries. The hook was adjusted, the ring put in place, and nail inserted by the boatswain, who was directing the operations, and when all this was done the libelant was directed by him to twist the turnbuckle so as to tighten the lashings over the lumber.

From these facts the conclusion seems to me unavoidable that the accident was due to the negligence of the boatswain in placing in the hole a nail which could and did drop out instead of a slip-pin which would not, and then directing libelant to tighten the lashing. The boatswain, under the circumstances, was a seaman having command, within the meaning of this provision, of the Act of March 4th, 1915, known as the Seamen's Law:

"That in any suit to recover damages for any injury sustained on board a vessel or in its service, seamen having command shall not be held to be fellow-servants with those under their authority."

The negligence was not wholly that of the boatswain, because he testified that there were no pins provided, and that it was consequently necessary to use nails.

The libelant is entitled to recover, and because of his suffering and decreased earning capacity a decree will be entered in his favor for \$1,500 and costs.

May 14th, 1917.

M. T. DOOLING,
Judge.

[Endorsed]: Filed May 14, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [117]

At a stated term of the District Court of the United States of America, in and for the Southern Division of the Northern District of California, held at the United States Postoffice and Courts' Building, in the city and county of San Francisco, State of California, on the 22d day of May, in the year of our Lord one thousand nine hundred and seventeen. Present: The Hon. M. T. DOOLING, District Judge.

No. 16,129.

GEORGE I. DUNWOODY,

Libelant,

vs.

The Am. Steamship "COLUSA," etc., and GRACE
STEAMSHIP COMPANY, a Corporation,
Libelees.

Final Decree.

This cause having been heard on the pleadings and the proof, and after argument by the advocates of the respective parties, and due deliberation had thereon, it is now by the Court

ORDERED, ADJUDGED and DECREED, That there is now due, owing and unpaid to the libelant herein, George I. Dunwoody, from the steamship "Colusa," her boilers, engines, tackle, apparel and other furniture and from the Grace Steamship Co., a Corporation, libelees herein, jointly and severally, the sum of fifteen hundred (1500) dollars as dam-

ages herein because of the injuries received by said libelant as in his libel herein alleged, together with interest on said sum, from the date of this decree until the same be satisfied, at the rate of six per centum per annum, and his costs, to be taxed, and that the same is a lien [118] upon said steamship "Colusa," her boilers, engines, tackle, apparel and other furniture; and it further appearing to the Court that said steamship, her boilers, engines, tackle, apparel and other furniture, have been released to said Grace Steamship Co., a Corporation, as claimant thereof, upon a stipulation for value in the sum of four thousand (4,000) dollars with said Grace Steamship Co., a corporation, as principal, and Maryland Casualty Company as surety, and that said principal and said surety have given a cost bond herein in the sum of two hundred and fifty dollars, it is now hereby ordered that said Grace Steamship Co., a corporation, and said Maryland Surety Company, surety, pay said libelant said sum of fifteen hundred dollars, with costs taxed at the sum of ——— dollars, together with interest on said sums from the date of this decree until the same be paid, and costs and expenses of execution, if any; and if this decree shall remain unsatisfied for ten days after the entry thereof and notice to Goodfellow, Eells, Moore & Orrick, proctors for said libelees, then said surety Maryland Surety Company shall cause the engagements of its stipulation to be performed or show cause within four days why execution should not issue against it, its goods and chattels, lands and tenements or other real estate, according to its stipulation; and if no cause be shown

within said time and as provided by the rules of this court, then it is further ordered that execution forthwith issue for the satisfaction of this decree against said claimant and against said surety, their goods and chattels, lands and tenements, or other real estate.

M. T. DOOLING,

United States District Judge. [119]

Received a copy of the within form of final decree this 15th day of May, 1917.

GOODFELLOW, EELLS, MOORE & OR-
RICK,

Proctors for Libelees.

[Endorsed]: Filed May 22, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk.

Entered in Vol. 7, Judge and Decrees at page 195.
[120]

*In the Southern Division of the United States Dis-
trict Court, for the Northern District of Cali-
fornia, First Division.*

IN ADMIRALTY—No. 16,129.

GEORGE I. DUNWOODY,

Libelant and Appellee,

vs.

The American Steamship "COLUSA," etc., (Grace
Steamship Company, Claimant), and GRACE
STEAMSHIP COMPANY, a Corporation,
Libelees and Appellants.

Notice of Appeal.

To the Clerk of the Above-entitled Court, and to F.
R. Wall, Esq., Proctor for Libelant:

You and each of you will please hereby take notice that the libelees above named, and each of them, hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the final decree made and entered in the above-entitled cause on the 22d day of May, 1917, and from the whole of such decree.

Dated at San Francisco, California, this 6th day of June, 1917.

Yours, etc.,

GOODFELLOW, EELLS, MOORE & OR-
RICK,

Proctors for Libelees and Appellants.

Service of a copy of the within is hereby acknowledged this 6th day of June, A. D. 1917.

F. R. WALL,

Proctor for Libelant and Appellee.

[Endorsed]: Filed Jun. 6, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [121]

**Certificate of Clerk U. S. District Court, to Apostles
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 121 pages, numbered from 1 to 121, inclusive, contain a full, true and correct transcript of certain records and

proceedings, in the cause entitled, George I. Dunwoody, Libelant, vs. The American Steamship "Colusa," etc., and Grace Steamship Company, a Corporation, Respondents, No. 16,129, as the same now remain on file and of record in this office; said Transcript having been prepared pursuant to and in accordance with the "Praeceptum for Apostles on Appeal" (copy of which is embodied in this transcript) and the instructions of the Proctors for Respondents and Appellants herein.

I further certify that the cost for preparing and certifying to the foregoing Apostles on Appeal is the sum of forty-nine dollars and seventy cents (\$49.70), and that the same has been paid to me by the Proctors for the Appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 24th day of August, A. D. 1917.

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk.

C. M. T.

[Endorsed]: No. 3043. United States Circuit Court of Appeals for the Ninth Circuit. The American Steamship "Colusa," Her Boilers, Engines, Tackle, Apparel and other Furniture, and Grace Steamship Company, a Corporation, Appellants, vs. George I. Dunwoody, Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of

the United States District Court for the Northern District of California, First Division.

Filed August 29, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

GEORGE I. DUNWOODY,

Libelant and Appellee,

vs.

The American Steamship "COLUSA," etc.,
(Grace Steamship Company, Claimant), and
GRACE STEAMSHIP COMPANY, a Cor-
poration,

Libelees and Appellants.

**Stipulation and Order Extending Time to File Ap-
ples on Appeal and Docket Cause to and Includ-
ing August 1, 1917.**

IT IS HEREBY STIPULATED AND
AGREED by and between the respective parties
hereto that the time for printing the record and fil-
ing and docketing this cause on appeal in the United
States Circuit Court of Appeals, for the Ninth Cir-
cuit, may be and the same is hereby extended to and
including the first day of August, 1917.

Dated July 2d, 1917.

F. R. WALL,

Proctors for Libelant and Appellee.

GOODFELLOW, EELLS, MOORE & ORRICK,

Proctors for Libelees and Appellants.

It is so ordered by the Court.

Dated July, 1917.

WM. H. HUNT,

Judge.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals, for the Ninth Circuit. George I. Dunwoody, Libelant and Appellee, vs. The American SS. "Colusa," etc., Libelees and Appellants. Stipulation and Order Extending Time for Docketing Cause on Appeal. Filed Jul. 2, 1917. F. D. Monekton, Clerk.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

GEORGE I. DUNWOODY,

Libelant and Appellee,

vs.

The American Steamship "COLUSA," etc.,
(Grace Steamship Company, Claimant), and
GRACE STEAMSHIP COMPANY, a Corporation,

Libelees and Appellants.

**Order Extending Time to File Apostles on Appeal
and Docket Cause to and Including September
1, 1917.**

Good cause appearing therefore, it is hereby ordered that the time for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same is hereby extended to and including the first day of September, 1917.

Dated August 1st, 1917.

WM. W. MORROW,
Judge.

[Endorsed]: No. —. In the United States Circuit Court of Appeals, for the Ninth Circuit. George I. Dunwoody, Libellant and Appellee, vs. The American SS. "Colusa," etc., et al., Libelees and Appellants. Order Extending Time for Docketing Cause on Appeal. Filed Aug. 1, 1917. F. D. Monckton, Clerk.

[Endorsed]: No. 3043. United States Circuit Court of Appeals for the Ninth Circuit. American Steamship "Colusa," etc., et al., vs. George I. Dunwoody. 2 Orders Under Rule 16 Enlarging Time to September 1, 1917, to File Record thereof and to Docket Case. Re-filed Aug. 31, 1917. F. D. Monckton, Clerk.

